TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 320

SOUTHERN STEAMSHIP COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD AND NATIONAL MARITIME UNION OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JULY 30, 1941.

CERTIORARI GRANTED OCTOBER 13, 1941.

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 7435. October Term, 1939.

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION OF SOUTHERN STEAMSHIP COMPANY TO REVIEW AND SET ASIDE ORDER OF NATIONAL LABOR RELATIONS BOARD DATED APRIL 22, 1940.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The petition of Southern Steamship Company (hereinafter referred to as "Southern"), by its attorneys, respectfully shows and alleges:

1. The petitioner, Southern, is and, at all times hereinafter mentioned or referred to, was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and is now, and has continuously for a long period of time, been engaged in the operation of steamers for the carrying of freight between the ports of Philadelphia, in the State of Pennsylvania, and of Houston, in the State of Texas.

2. The respondent, National Labor Relations Board (hereinafter referred to as "Board") is a public body organized and existing under an act of Congress (49 stat. 449,

29 U. S. C. A. Section 151, et seq.) herein referred to as "National Labor Relations Act," and the members of said Board, to wit, J. Warren Madden, Edwin S. Smith, and William M. Leiserson, have been appointed by the President of the United States pursuant to said act of Congress.

3. Upon charges and amended charges filed by National Maritime Union of America, affiliated with the Congress of Industrial Organizations, then known as the Committee for Industrial Organization, an alleged labor organization (hereinafter referred to as "Union"), the Board issued its complaint dated November 23, 1938, against the petitioner, Southern, alleging that the said petitioner had engaged in and was engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 stat. 449, which allegations were denied by the petitioner, Southern, in its answer duly filed.

4. Hearings were held in the City of Philadelphia, Commonwealth of Pennsylvania, on December 5, 6, 14, 21, 22 and 23, 1938, and in the City of Houston, State of Texas, on January 9, 1939, before a Trial Examiner duly designated by the Board.

On January 25, 1939, the petitioner, pursuant to permission granted at hearing, filed with the Trial Examiner: (1) a motion to dismiss the complaint; (2) a motion to strike out certain testimony, and (3) an objection to the motion of counsel for the Board that the complaint be conformed to the proof and an exception to the ruling of the Trial Examiner thereon.

5. Under date of February 25, 1939, the Trial Examiner filed his Intermediate Report finding, among other things, that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (5) and Section 2 (6) and (7) of said National Labor Relations Act and recommending that the petitioner, Southern, cease and desist from said unfair labor

practices, offer reinstatement upon application to six employees who went on strike on July 25, 1938, offer reinstatement with back pay to four of the five employees whom he found had been discriminatorily discharged, offer back pay to the fifth employee. The petitioner, Southern, duly filed exceptions to said Intermediate Report on or about March 8, 1939, receipt of which was duly acknowledged by the Board, and which exceptions are a part of the record in this case and are hereby made a part hereof by reference, the same as if fully rewritten.

6. On November 2, 1939, oral argument was held before the Board, pursuant to notice, at which time attorney for the petitioner was present and presented argument.

7. On April 23, 1940, the petitioner, Southern, was served with a copy of Decision and Order of the Board issued under date of April 22, 1940, a copy of which Decision and Order is attached hereto, made a part hereof, and marked Exhibit "A." In said Decision and Order of April 22, 1940, the Board found that the petitioner had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (5) and Section 2 (6) and (7) of said National Labor Relations Act. Said Board ordered, among other things, that the petitioner cease and desist from specified alleged practices; that petitioner upon request, bargain collectively with Union in respect to rates of pay, wages, hours of employment and other conditions of employment as the representative of the unlicensed personnel employed in the deck, engine, and the stewards' departments, with certain exceptions, on vessels operated by the petitioner; that petitioner in a specified manner offer certain persons immediate reinstatement to their former or substantially equivalent positions with petitioner without prejudice to their seniority and other rights and privileges; that petitioner, upon application, and upon the first available sailing date after such application offer to certain other persons immediate reinstatement to their former or substantially equivalent positions with petitioner without

prejudice to their seniority and other rights and privileges, dismissing, if necessary, those who have been hired to replace them; that petitioner pay to each of certain persons sums sufficient to equal that which each would formerly have earned as wages during certain periods, plus a bonus, less the amount which each earned during such periods, deducting, however, from sums otherwise payable to such employees moneys received by them during such periods for work performed upon public relief agencies, which sums so deducted petitioner is ordered to pay to the public relief agencies which furnished employment to such employees during such periods; that petitioner immediately post on its docks and on its vessels specified notices to its employees; and that petitioner notify said Board in writing within ten days from date of said order what steps petitioner has taken to comply with said order.

8. Under and by virtue of the National Labor Relations Act, this Honorable Court has jurisdiction to hear this petition for the reason that the petitioner, Southern, resides in the State of Delaware within the Third Judicial Circuit of the United States of America.

9. The petitioner, believing itself aggrieved by the Order dated April 22, 1940 of the Board and considering the same unlawfully prejudicial to it, hereby petitions for a review of said Order of the Board by this Honorable Court and assigns as its reasons for seeking such review and as its statement of errors committed by the Board the matters and things hereinafter set forth, your petitioner intending to rely on the same.

10. The Board has no jurisdiction or authority or power whatsoever under the provisions of the National Labor Relations Act or the rules and regulations of the Board or otherwise, to make and issue its Decision and Order of April 22, 1940, which the petitioner herein prays this court to review and set aside.

11. The Board erred in affirming the rulings of the Trial Examiner made at the taking of evidence before him upon motions and objections and offers to prove, the record disclosing that said Trial Examiner did in fact commit in that regard many errors prejudicial to the petitioner, all as appears in detail in the exceptions of the petitioner to the rulings of the Board and the Trial Examiner, which exceptions are part of the transcript of the record herein and are by reference made a part of this petition for review.

12. The Board erred in making and issuing its findings of fact, conclusions of law and order herein, which are based in substantial part upon evidence erroneously admitted and considered by the Board to the prejudice of the petitioner at the taking of evidence before the Trial Examiner and were made and issued without giving consideration to relevant and competent evidence offered by the petitioner in its behalf but excluded, to its prejudice, by the Trial Examiner, all as appears in detail in the exceptions of the petitioner to the rulings of the Trial Examiner, which exceptions are part of the transcript of the record herein and are by reference made a part of this petition for review.

13. The Board erred in not dismissing the complaint herein upon the grounds set forth in the petitioner's answer thereto.

14. The Board erred in overruling a motion made by the petitioner at the conclusion of the evidence to dismiss the complaint herein, upon the grounds set forth in said motion.

15. The Board erred in overruling the objection of the petitioner at the conclusion of the evidence to motion of counsel for the Board to conform the complaint to the proof.

16. The Board erred in not dismissing the complaint herein for the reason that the evidence herein does not dis-

close any unfair labor practices committed by the petitioner or the existence of any current labor dispute, and, hence, the Board was without jurisdiction in this case.

17. The Board erred in not dismissing the complaint herein for the reason that the Board had no jurisdiction in the premises because the certification made January 26, 1938 by the Board of the National Maritime Union of America as the bargaining agency was invalid, erroneous, contrary to law, and unenforcible, said certification being based upon the Board's erroneous ruling that in the absence of consent by the labor organization involved company representatives should not be permitted to be present at elections to determine collective bargaining representative.

18. The Board erred in making and issuing its Order herein for the reason that said Order is contrary to law, the Board not having met the burden of proof required by it; is not supported by the evidence herein; is based upon the Board's findings, which are not supported by the evidence herein, but on inferences which are not the result of a judicial process or reasoning; is based upon the Board's conclusions of law, which are unsound and incorrect statements of law and are not supported by or applicable to the evidence nor by the record herein; is beyond the jurisdiction of the Board, and is not based upon or justified by the Board's own findings of fact or its own conclusions of law.

The Board erred for the reasons stated in the preceding paragraph and for the further reason that the Board's finding that the members of the crew were discharged at the conclusion of the voyage because they did not then and there sign on other shipping articles is erroneous because it was established that members of the crew customarily signed shipping articles for only one specific voyage and that the relationship of employer and employee terminates at the end of each voyage.

19. The Board erred in making and issuing that portion of its decision and order which is styled "The

remedy," for the reason that all and singular the statements, findings and conclusions therein contained are contrary to law and not supported by the evidence nor by the record herein, and constitute an abuse of discretion upon the part of the Board.

20. The Board erred in making and issuing those portions of its order by which the petitioner is ordered to repay to certain public relief agencies moneys by such agencies heretofore paid to former employees of the petitioner for work performed by them for such agencies during such time as they were not employed by the petitioner for the reason that such portions of said order are contrary to law, not supported by the evidence and beyond the jurisdiction of the Board, and constitute an abuse of discretion on the part of the Board.

21. The Board erred in making and issuing its conclusions of law, numbered from 1 to 7, inclusive, for the reason that said conclusions of law are, as a whole, and each separately, unsound and incorrect statements of law; are not supported by or applicable to the evidence herein; are based upon findings of fact which are not supported by the evidence herein nor warranted by the entire record herein; and are beyond the jurisdiction of the Board.

22. The Board erred in making and issuing that portion of its decision and order of April 22, 1940, which is designated therein as "Findings of Fact," upon the ground that it is not in proper and legal form in that it has mingled therein statement of witnesses, expressions of opinion, references to evidence and matters of argument upon the part of the Board. Preserving the error just above assigned, the petitioner avers that the Board erred in making and issuing its findings of fact as a whole, for the reason that said findings of fact are as a whole not supported by the evidence nor by the record herein. The petitioner, preserving the above assignments of error, avers that the Board erred, for the reasons already stated, in making and issuing

each and every finding, statement and conclusion of fact in its decision and order set forth under the heading "Finding of Fact." Preserving, again, each and all of the assignments of error as above noted, the petitioner avers that the Board, for the reason that they are each and all not supported by the evidence nor by the record herein, erred in making and issuing ultimate findings of fact, as follows, to wit: All and singular the findings of fact set forth and excepted to in Exceptions No. 3 to No. 24 inclusive of "Respondent's Exceptions to Intermediate Report," which Exceptions were duly filed with the Board (on or about March 8, 1939), and which are by reference made a part of this petition for review, the same as if set forth in full herein.

23. The Board erred in making and issuing its order for the reason that the Board should have dismissed the complaint herein on the ground that the evidence disclosed that the alleged acts of the petitioner complained of as constituting alleged unfair labor practices in violation of the National Labor Relations Act, did not have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states or tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

24. The Board erred in making and issuing its order herein insofar as it relates to or is based upon the sit-down strike, for the reason that the Board has no jurisdiction to make any order whatsoever relating to the sit-down strike or matters and things based upon or growing out of the sit-down strike due to the fact that the evidence herein discloses, without dispute, that the sit-down strike was not caused by any unfair labor practice under the terms of the National Labor Relations Act and there being no current labor dispute here involved.

25. The Board, in making and issuing that portion of its order herein (Section 2 (b) and 2 (e)) by which petitioner is ordered by the Board to reinstate designated sit-

down strikers formerly employed by the petitioner, for the reason that the evidence discloses that the sit-down strike was wholly unlawful on the part of the sit-down strikers and was not caused by any unfair labor practices under the terms of the National Labor Relations Act.

26. The Board erred in making and issuing that portion of its order herein (Section 2 (b) and 2 (e)) by which petitioner is ordered to reinstate designated parties formerly employed by the petitioner for the reason that the five members of the crew whom the petitioner failed to reship and the other members of the crew who signed off and voluntarily decided not to reship, having "signed off", had automatically severed their contractual relations with the petitioner and were no longer employees; for the further reason that if said signing off without the signing of new articles be deemed a discharge, then said discharge was for cause shown as well as for participation in sit-down strike and breach of shipping articles; for the further reason that said portion of the Board's order is contrary to law and not supported by the evidence herein and constitutes a denial to the petitioner of the right of liberty of contract as guaranteed to petitioner by the Fifth Amendment to the Constitution of the United States; for the further reason that said order does not give weight and consideration to the relevant and competent evidence offered by the petitioner at the hearing herein tending to prove that said Warren, Pfuhl, Ferguson, Smith, and Tracey were not re-employed by petitioner because of causes shown and not by reason of any unfair labor practice on the part of the petitioner and that said Reeves, Lathan, Burns, Hughes, Neeley, and Holt voluntarily and of their own volition decided not to reship with the petitioner and not by reason of any unfair labor practice on the part of the petitioner.

27. The Board erred in making and issuing that portion of its order (Section 2 (e)) by which petitioner is

ordered to dismiss, if necessary, those who have been hired to replace said Reeves, Lathan, Burns, Hughes, Neeley, and Holt for the reason that said portion of the Board's order is contrary to law; not supported by the evidence; and wholly beyond the jurisdiction and authority of the Board and constitutes an abuse of discretion by the Board.

28. The Board erred in making and issuing that portion of its order herein (Section 2 (c), 2 (d), and 2 (f)) by which petitioner is ordered to pay to the parties designated therein a sum of money equal to that which each would normally have earned as wages from July 25, 1938 to the date on which petitioner offers reinstatement, (adding in the case of said Ferguson a bonus of $25.00) less net earnings during said period (and in the case of said Pfuhl excluding the period from February 25, 1939 to April 22, 1940), is contrary to law, not supported by the evidence and wholly beyond the jurisdiction and authority of the Board and constitutes an abuse of discretion by the Board.

29. The Board erred in making and issuing that portion of its order (Section 2 (g)) by which petitioner is ordered to post in a conspicuous place on its docks and on its vessels and maintain for a period of at least sixty days notices to its employees that it will cease and desist from certain practices, and that it will take certain affirmative action for the reason that said order is beyond the scope of authority constitutionally conferred upon the Board by the National Labor Relations Act and is contrary to law.

30. The Board erred in making and issuing that portion of its order herein (Section 2 (a)) by which petitioner is ordered to bargain collectively with the National Maritime Union of America, affiliated with the C. I. O., as the exclusive representatives of the unlicensed personnel so designated in said section for the reason that said portion of the Board's order is contrary to law and not supported by the evidence herein, the certification of said representative being invalid and based on an erroneous ruling of the Board.

31. The Board erred in making and issuing its order, and each and every portion thereof, and particularly those portions by which the petitioner is ordered to reinstate sit-down strikers without loss of seniority, rights and other privileges, and in order to make places for them, to dismiss employees subsequently hired for the reason that said order, and each and every portion therein constitutes an arbitrary and gross abuse of discretion on the part of the Board and does not tend in any manner whatsoever to effectuate the policies of the National Labor Relations Act, but tends to defeat them.

32. The Board erred in making and issuing its findings of fact, conclusions of law and order for the reason that the petitioner was not afforded as to the charges made against it in the complaint, a hearing in accordance with the usual and accepted rules of procedure and the law of the land and was denied due process of law in violation of the Fifth Amendment of the Constitution of the United States, hearsay, rumor, and wholly irrelevant evidence being admitted by the Trial Examiner in support of the charges against the petitioner and findings of fact being based solely thereon.

33. The Board erred in making and issuing its order herein for the reason that the National Labor Relations Act, as construed and applied by the Board as proposed herein, is unconstitutional and void in that it denies to the petitioner due process of law and freedom of contract in violation of the Fifth Amendment to the Constitution of the United States, and freedom of speech in violation of the First Amendment to the Constitution of the United States, and in that it seeks to delegate to the Board, an administrative body, the right to exercise legislative power in violation of Article I, Section 1 of the Constitution of the United States, and judicial power in violation of Article III, Section 1 of the Constitution of the United States.

34. The Board erred in making and issuing its order and each and every part thereof, all and singular its con-

clusions of law and all and singular its findings of fact for the reason that said order and each and every portion thereof, said conclusions of law and said findings of fact are each and all contrary to law, not supported by the evidence nor by the record herein.

WHEREFORE, the petitioner prays:

(a) That copy of this petition be forthwith served according to law upon the said National Labor Relations Board;

(b) That said National Labor Relations Board may be required, in conformity with law, to certify to this Honorable Court the transcript of the entire record in the proceedings wherein said order was entered;

(c) That said proceedings and the findings, conclusions, decision and order of the National Labor Relations Board herein be reviewed by this Honorable Court and that the decision and order be set aside, vacated and annulled and that the said National Labor Relations Board be ordered to dismiss its complaint against the petitioner; and

(d) That this Honorable Court exercise its jurisdiction over the parties and the subject matter of this petition and grant to the petitioner all such other and further relief in the premises as the rights and equities of the cause may require.

SOUTHERN STEAMSHIP COMPANY
By CHARLES F. SHERRY.

ADAMS, CHILDS, MCKAIG & LUKENS,
By RANDOLPH W. CHILDS.
RAWLE & HENDERSON,
By JOSEPH W. HENDERSON.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss:*

CHARLES F. SHERRY, being duly sworn, deposes and says that he is Marine Superintendent of Southern Steamship Company, the petitioner named in the foregoing petition and is authorized to make this affidavit on behalf of the petitioner; that he has read the foregoing petition and notes the contents thereof; that the statements therein contained are true as he verily believes.

CHARLES F. SHERRY.

Sworn to and subscribed before me this 30th day of April A. D. 1940.

GEORGE M. BRODHEAD, JR.,
(Seal) *Notary Public.*
My Commission Expires Jan. 19, 1943.

EXHIBIT "A."

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

CASE NO. C-1204.

In the Matter of

Southern Steamship Company

and

National Maritime Union of America
(Affiliated with the C. I. O.)

MR. JOSEPH F. CASTIELLO, for the Board.

ADAMS, CHILDS, MCKAIG & LUKENS, by MR. RANDOLPH W. CHILDS, and MR. EDGAR MCKAIG, of Philadelphia, Pa., MR. JOSEPH W. HENDERSON, of Philadelphia, Pa., and ROYSTON & RAYZOR, by MR. JOHN BROWN, of Houston, Texas, for the respondent.

MR. WILLIAM L. STANDARD, by MR. MAX LUSTIG, of New York City, and MANDELL & COMBS, by MR. ARTHUR J. MANDELL, of Houston, Texas, for the Union.

MR. RAY JOHNSON, of counsel to the Board.

DECISION AND ORDER.

STATEMENT OF THE CASE.

Upon charges and amended charges duly filed by National Maritime Union of America, affiliated with the C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Fourth Region (Philadelphia, Pennsylvania), issued its complaint on November 23, 1938, against Southern Steamship Company, Philadelphia, Pennsylvania, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices

affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices, the complaint alleged in substance (1) that the unlicensed personnel employed in the deck, engine, and stewards' department, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by the respondent, constitute a unit appropriate for the purposes of collective bargaining; (2) that on January 26, 1938, the Board certified the Union as the exclusive bargaining representative of all the employees in such unit; (3) that in the months of January, February, March, April, and August, 1938, and at all times thereafter, the respondent refused to bargain with the Union as the exclusive bargaining representative of employees in the appropriate unit; (4) that on July 18, 1938, as a result of the respondent's unfair labor practices, a strike occurred on the respondent's ship, *City of Fort Worth,* while it was moored to the dock at Houston, Texas; (5) that on July 25, 1938, the respondent terminated the employment of and refused to reinstate Joseph G. Warren, John Pfuhl, Jr., Elmer J. Ferguson, Edward W. Smith, and John J. Tracey because they participated in said strike, joined the Union, and engaged in other concerted activities with employees of the respondent for the purposes of collective bargaining and other mutual aid and protection; (6) that on July 25, 1938, as a result of said discharges, a strike occurred on the respondent's ship, *City of Fort Worth,* while it was moored to the dock at Philadelphia, Pennsylvania; and (7) that by the foregoing and by other acts the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On November 23, 1938, copies of the complaint and an accompanying notice of hearing thereon were duly served upon the respondent and the Union. On November 30,

1938, the respondent filed with the Regional Director a motion to extend the date of the hearing. On the same day the Regional Director denied the motion. On December 1, 1938, the respondent filed an answer to the complaint in which it admitted the allegations concerning the nature and scope of its business, the appropriateness of the above-described unit, and the certification of the Union by the Board, but denied that it had engaged in any unfair labor practices. In its answer the respondent alleged, *inter alia*, that the Board's certification of the Union was invalid, that it had not refused to bargain collectively with the Union prior to August 1938, that because of the acts of certain union members in participating in a sit-down strike on July 18, 1938, it was not thereafter required to recognize the Union as the exclusive bargaining representative of the employees, and that the employees named in the complaint were not discharged but were refused reemployment because they had wilfully disobeyed lawful commands and engaged in a sit-down strike in violation of their shipping articles.

Pursuant to notice, a hearing was held on December 5, 6, 14, 21, 22, and 23, 1938, at Philadelphia, Pennsylvania, and on January 9, 1939, at Houston, Texas, before William Seagle, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the entire case, counsel for the Board moved to amend the complaint to conform to the proof. The motion was granted. On January 25, 1939, pursuant to permission granted at the hearing, the respondent filed with the Trial Examiner: (1) a motion to dismiss the complaint; (2) a motion to strike out certain testimony; and (3) an objection to the motion that the complaint be conformed to the proof and an exception to the ruling of the Trial Examiner thereon. In his Intermediate Report the Trial Examiner denied both

motions and overruled the objection. During the course of the hearing the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On February 25, 1939, the Trial Examiner filed an Intermediate Report, copies of which were duly served upon all parties, finding that the respondent had engaged in and was engaging in unfair labor practices, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from its unfair labor practices, upon application offer reinstatement to six employees who went on strike on July 25, 1939, offer reinstatement with back pay to four of the five employees who he found had been discriminatorily discharged, and offer back pay to the fifth employee. Thereafter the respondent filed exceptions to the Intermediate Report and a brief. Pursuant to notice duly served upon all parties, a hearing for the purposes of oral argument was held before the Board in Washington, D. C., on November 2, 1939. The respondent and the Union were represented by counsel and participated in the argument.

The Board has considered the exceptions to the Intermediate Report and, except in so far as they are consistent with the findings of fact, conclusions of law, and order set forth below, finds no merit in them.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT.

I. The Business of the Respondent.

The respondent, Southern Steamship Company, is a Delaware corporation having its principal office in Philadelphia, Pennsylvania. It owns and operates seven vessels

having an aggregate gross tonnage of 18,382 and carrying freight between the ports of Philadelphia, Pennsylvania, and Houston, Texas. South-bound cargo carried by the ships is obtained from all of the States on the Eastern Seaboard and from the State of Ohio. North-bound cargo is obtained from Arizona, Colorado, Louisiana, New Mexico, Oklahoma, and Texas. During 1937 the respondent's vessels carried 341,581 tons of freight representing revenue amounting to $1,991,351.81.

We find that the respondent is engaged in trade, traffic, transportation, and commerce among the several States and that the crews employed on its ships are directly engaged in such trade, traffic, transportation, and commerce.

II. The Organization Involved.

National Maritime Union of America is a labor organization affiliated with the Committee for Industrial Organization.[1] It admits to its membership the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold li nses, on vessels operated out of the Atlantic and Gulf ports by the respondent.

III. The Unfair Labor Practices.

A. THE REFUSAL TO BARGAIN.

The complaint alleges that on or about January 26, 1938, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of the employees in an appropriate unit although the Board had certified the Union as such representative. The respondent denies that the Union requested the respondent to bargain collectively prior to August 18, 1938, and alleges that "on and after August 23, 1938, it

[1] Now the Congress of Industrial Organizations.

maintained its position that pending a judicial determination of the validity of the election and of said certification" it was not required to recognize the Union, and that by reason of the unlawful acts of the employees in conducting a sit-down strike and refusing to obey orders, it was not thereafter required to recognize the Union as the exclusive representative of the employees in the appropriate unit.

On July 16, 1937, the Board issued a Decision and Direction of Election [2] in which it found, *inter alia,* that the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on the vessels operated out of Atlantic and Gulf ports by the respondent, constitute an appropriate bargaining unit. The complaint herein alleges that this unit is appropriate and the respondent admits the allegation. We find that the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on the vessels operated out of Atlantic and Gulf ports by the respondent, constitute a unit appropriate for the purposes of collective bargaining and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

On January 26, 1938, following an election conducted pursuant to the Direction of Elections, the Board certified the Union as the exclusive bargaining representative of all the employees in the appropriate unit and dismissed a petition filed by the respondent to vacate the election on the ground that no representative of the respondent was permitted to observe the balloting on one of its vessels.[3]

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[2] *Matter of American France Line et al. (Southern Steamship Company) and International Seamen's Union of America,* 3 N. L. R. B. 64.

[3] *Matter of American France Line et al. (Southern Steamship Company) and International Seamen's Union of America,* 4 N. L. R. B. 1140.

The respondent now contends that the certification was invalid since the Board's ruling on its petition was incorrect. The respondent stipulated that the validity of the certification depended, for the purposes of the present proceeding, upon the correctness of the Board's ruling that in the absence of consent by the labor organizations involved, the respondent was not entitled to have an observer at the polls. In discussing the petition of the respondent we said:

> The Board has consistently held that in the absence of consent by the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives. The choice of representatives by employees should be made free from any interference or coercion by employers. The presence of an employer's representative at an election may prevent such a free choice, although no interference or coercion is intended by the employer. The Board has adopted means of conducting these elections whereby the interests of all parties, including the employer's, are adequately protected.

Employers may not, as a matter of right, exercise any prerogative in the Board's administration of Section 9 of the Act.[3a] We are of the opinion that the respondent was in no manner prejudiced by our refusal to permit it to participate in the conduct of the balloting and we affirm our ruling cited above.

We find that on January 26, 1938, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the appropriate unit, and pursuant to Section 9 (a) of the Act, was on January 26, 1938, and at all times thereafter has been, the exclusive representative of all the employees in such a unit for the purposes of collective bargaining in respect to rates of

[3a] Under our present election procedure, we now permit the employer to designate non-supervisory employees as observers at the polling places during an election for the purpose of challenging ineligible voters and verifying the tally.

pay, wages, hours of employment, and other conditions of employment.[4]

Shortly after the certification of January 26, 1938, E. J. Cunningham, a union representative, requested L. A. Schreider, Jr., the respondent's representative at Houston, to arrange for a collective bargaining conference and to issue passes to the union shore delegates, without which they could not board the respondent's ships. Schreider replied that he did not have the authority to grant the requests, but that he would transmit them to the home office in Philadelphia. Schreider also promised to communicate the respondent's answer to Cunningham. Neither the Union nor Cunningham thereafter received a communication from Schreider.

In late January or early February 1938, after the Board had certified the Union, Paul Palazzi, the Union's business agent at Philadelphia, telephoned Charles F. Sherry, marine superintendent of the respondent, and requested a collective bargaining conference. Sherry replied that the matter was in the hands of the respondent's attorney. About the middle of February 1938, Palazzi wrote Sherry but received no reply. During the next month, Palazzi made two attempts to reach Sherry by telephone, but was told each time that Sherry was out. On the last occasion Palazzi left his telephone number and requested that Sherry call him. Sherry however did not respond to

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[4] The respondent does not claim that the Union at any time lost its status as bargaining representative of a majority of the employees in the appropriate unit. *Cf. N. L. R. B. v. Highland Park Manufacturing Company,* March 11, 1940 (C. C. A. 4), enf'g *Matter of Highland Park Manufacturing Company and Textile Workers Organizing Committee,* 12 N. L. R. B. 1238; *N. L. R. B. v. Remington Rand, Inc. (Central Executive Council of Remington Rand Employees' Ass'ns, Intervener),* 94 F. (2d) 862 (C. C. A. 2), enf'g as modified, *Matter of Remington Rand, Inc. and Remington Rand Joint Protective Board of the District Council Office Equipment Workers,* 2 N. L. R. B. 626; *N. L. R. B. v. Biles-Coleman Lumber Company,* 96 F. (2d) 197 (C. C. A. 9), enf'g *Matter of Biles-Coleman Lumber Company and Puget Sound District Council of Lumber and Sawmill Workers,* 4 N. L. R. B. 679; *N. L. R. B. v. Louisville Refining Company,* 102 F. (2d) 678 (C. C. A. 6), enf'g as mod., *Matter of Louisville Refining Company and International Association, Oil Field, Gas Well and Refinery Workers of America,* 4 N. L. R. B. 844.

this request.[5] Palazzi then attempted to interview Sherry at the respondent's docks in Philadelphia. A watchman asked Palazzi to identify himself, and when Palazzi revealed his identity and the nature of his business with Sherry, the watchman refused to grant him permission to enter Sherry's office.

On August 18, 1938, Palazzi sent Sherry a registered letter requesting a collective bargaining conference. On August 23, 1938, Sherry wrote Palazzi that until the validity of the Board's certification was settled by the Board and the courts the question of collective bargaining agreement was premature. On cross-examination, Sherry admitted that the respondent had taken this position from the time of the certification. The respondent admits that it refused to bargain with the Union after August 18, 1938. It is plain from the evidence, however, that the respondent had refused to bargain with the Union at all times subsequent to January 1938.[6]

We find that on or about January 26, 1938, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive representative of the employees in the above-described unit and that the respondent has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. THE STRIKE.

On July 17, 1938, 13 unlicensed seamen[7] of the *City of Fort Worth*, who were members of the Union, met at the

[5] The findings above with respect to the Union's efforts to initiate collective bargaining conferences with the respondent are based upon the uncontradicted testimony of Palazzi. During the hearing counsel for the respondent stated that Sherry would be called upon to testify that Palazzi's letter to him of February, 1938, was never received. Proposed testimony was not elicited, although Sherry was called as a witness for the respondent.

[6] The respondent contends that by reason of the unlawful conduct of the strikers on July 18, 1938, any obligation on its part to bargain collectively with the Union thereafter was removed. We find below, however, that the conduct of the strikers was not unlawful. Even assuming therefore that such conduct would relieve the respondent of its obligation under the Act, its contention is without merit.

[7] Joseph Crassavaz, William Reeves, John Pfuhl, Jr., Joseph G. Warren, Henry A. Lathan, William Godfrey Burns, John J. Tracey, Edward B. Hughes, Alexander A. Braun, Elmer J. Ferguson, Gordon Neeley, Charles C. Holt, and Edward W. Smith.

union hall in Houston, Texas, and decided to go on strike the following morning in order to compel the respondent to recognize the Union and to issue passes to the shore delegates. At 8 a. m. on July 18, while the vessel was moored to the dock the same men carried the strike into effect when John J. Tracey, an oiler, failed to turn the steam "on deck" for the purpose of loading the cargo. However, sufficient steam was maintained to operate the fire alarms, the ice machine, the sanitary pumps, and the line.

When Norry Pool,[8] the first assistant engineer, discovered that there was not sufficient steam to load the cargo, he asked Tracey why he had not turned on the steam. Tracey replied that the crew was striking for recognition of the Union and passes for the shore delegates and that he did not intend to turn on the steam. Pool then stated that he would put the steam on deck himself. Tracey answered, "Well, if you do, I will have to take the fireman out of the fireroom." Pool then turned the steam on, and Tracey thereupon called out Alexander A. Braun, the fireman, who "threw the pumps."

Braun, whose watch was ended at that time, went off duty and was replaced by Elmer J. Ferguson. Joseph A. Norton, the chief engineer, came to the fireroom and attempted unsuccessfully to persuade Ferguson and Tracey to perform their duties. After Ferguson refused to tend the fires, Laurence A. Robinson, the second assistant engineer tended the fires himself and ordered Ferguson out of the fireroom. Tracey and Ferguson thereupon joined the other strikers who were sitting on the poop deck, the general meeting place of the employees when not on duty.

There were 19 unlicensed seamen in the crew, and the officers of the ship, with the assistance of those who did not participate in the strike, proceeded with the loading of the cargo. The strikers made no effort to interfere with the firing of the boilers or with the loading but during the entire period of the strike sat on the poop deck. About 10:30 a. m., Captain Anthony G. Rudan appealed to the men to

[8] Designated in the record as both "Pool" and "Paul."

return to work and upon their refusal told them that they were violating their shipping articles under which they had agreed to make a round trip from Philadelphia to Houston and return. Joseph G. Warren, the spokesman of the strikers, replied that they were striking for recognition of the Union and passes for the shore delegates and were justified in doing so since the Union had won an election conducted by the Board. Rudan then ordered the strikers collectively and individually to resume their stations, but the strikers refused to comply. Later in the morning Rudan brought aboard a deputy United States Shipping Commissioner who read the following excerpt from the shipping laws to the strikers:

> . . . the said crew agrees to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said master . . . .[9]

It should be noted that at no time were the striking employees ordered to leave the ship. Indeed, without objection from the captain they were served their midday meal by one of their own members, Smith, a messboy.

On the afternoon of the same day, J. N. Rayzor, the respondent's attorney in Houston, called Sherry at Philadelphia and advised him that if the respondent would agree to issue passes to the shore delegates, he thought that the Union would release the ship, Sherry instructed Rayzor that he did not know whether the respondent would issue such passes and that no agreement with the Union was to be made. After conversation with Sherry, Rayzor attempted to reach the president of the respondent, by telephone but was not successful. A few minutes later, however, Rayzor called A. J. Mandell, the union attorney in Houston, and without mentioning his prior conversation with Sherry, promised, if the Union would release the ship, to meet with

[9] This excerpt was included in the shipping articles signed by the crew, which are considered in detail below.

Mandell during the following week in an effort to negotiate an agreement. He also agreed to recommend to the respondent that passes be issued to the shore delegates. Rayzor testified that he did not apprise Mandell of Sherry's instructions because he intended to make a personal appeal to the president of the respondent. Relying upon Rayzor's promise, Mandell advised the union leaders to terminate the strike. The strike was accordingly terminated about 7 p. m. and the ship sailed at about 9 p. m. the same day with the crew intact. The officers on board admitted that the strike did not delay the sailing and that the vessel was in no danger during the period of strike.

We find that the strike was precipitated and prolonged primarily by reason of the respondent's unlawful refusal to bargain collectively with the Union.[10]

C. THE DISCHARGES.

During the return voyage to Philadelphia, it is conceded that the members of the crew conducted themselves in a competent manner. Captain Rudan testified that he had no complaints to make. Second Assistant Engineer Robinson testified that the strikers "were a good crew on the return voyage, just as they always were a good crew." He further testified that he spoke to three of the strikers who were on his watch during the return voyage (Ferguson, Braun, and Hughes), and said to them, "Well, boys, let's forget all about what happened; let's string along just as though nothing had happened." He concluded, "they went home just as though nothing had happened." First Mate Holland testified that he felt that he had a safe crew when he sailed from Houston on July 18.[11]

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[10] See *N. L. R. B. v. Remington Rand, Inc. (Central Executive Council of Remington Rand Employees' Assn's, Intervener)*, 94 F. (2d) 862 (C. C. A. 2), enf'g as mod., *Matter of Remington Rand, Inc. and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626; *Black Diamond S. S. Corporation v. N. L. R. B.*, 94 F. (2d) 875 (C. C. A. 2), enf'g *Matter of Black Diamond Steamship Corporation and Marine Engineers' Beneficial Association, Local No. 33*, 3 N. L. R. B. 84.

[11] The only complaint that appears on the record was made by Helland who testified that Smith, a messboy, would say "Good morning kind of half-hearted like."

Nevertheless, during the return voyage, the captain, at the recommendation of the ship's officers, decided not to re-ship Joseph G. Warren, John Pfuhl, Jr., John J. Tracey, Elmer J. Ferguson, and Edward W. Smith, five of the crew who had participated in the strike. The union members apparently anticipated the possibility that they might be discharged when the ship reached Philadelphia and while at sea, they met and decided to go on strike if any one of their number was discharged.

After the *City of Fort Worth* had docked at Philadelphia on July 25, and Warren, Tracey, Pfuhl, Smith, and Ferguson had signed off the shipping articles, the respondent informed them that they would not be engaged for the next voyage. Because of Ferguson's participation in the strike the respondent refused to pay him a bonus of $25 to which he was entitled for having worked a full year for the respondent. All of the strikers who had not been discharged, with but one exception, struck in protest against the respondent's refusal to re-ship the above-named men.[12] At his own request, Joseph Crassavaz, one of the strikers, was later reinstated. The record does not show that any of the other strikers have ever requested reinstatement; at the time of the hearing this strike was still in progress.

We have found that the strike of July 25 was caused by the discharge of Warren, Tracey, Pfuhl, Smith, and Ferguson. We find below that the respondent by discharging the five named employees engaged in unfair labor practice. We find therefore that the strike of July 25, 1938, was caused and prolonged by the respondent's unfair labor practices.

The respondent contends (1) that the employment of the persons named in the complaint terminated when they signed off the shipping articles on July 25, 1938, and that consequently they were not discharged; (2) that their participation in the sit-down strike justified the respondent's

[12] This employee was Alexander A. Braun.

refusal to re-ship these men; (3) that their violation of the terms of the shipping articles justified the respondent in refusing to re-ship them; and (4) that the persons refused re-shipment were thus refused for good and sufficient cause unrelated to their union membership and activity.

1. The Shipping Articles.

Pursuant to statute seamen are required to sign shipping articles at the beginning of each voyage and to sign off the articles at the conclusion of each voyage.[13] This requirement, however, does not preclude the employer and his crew "from mutually under taking to assure a crew the right to continue as employees and to re-sign if it desires after signing off articles at a voyage's end."[14] The record is plain that the mere termination of a voyage covered by shipping articles does not terminate the employee status of the respondent's employees here involved without some further action by either the respondent or the employees. Most of the seamen involved in this proceeding had worked continuously on the *City of Fort Worth* for a considerable period of time, being employed in the performance of odd jobs on the ship between voyages.[15] In accordance with the respondent's custom, the seamen usually sign the new articles for the next voyage at the time they sign off the old. Moreover, even in those instances in which the old and new articles are not signed on the same day, the seamen consider themselves engaged for the next voyage unless they are notified to the contrary.

We find that the tenure of employment of the respondent's seamen is not terminated by the mere expiration of

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[13] 46 U. S. C. A. 564, 574.

[14] *Waterman Steamship Corporation v. N. L. R. B.*, 60 S. Ct. 493, rev'g 103 F. (2d) 157 (C. C. A. 5), and enf'g *Matter of Waterman Steamship Corporation and National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama*, 7 N. L. R. B. 237.

[15] Thus Tracey had been employed continuously over a period of 16 months, Ferguson for a period of 1 year, Pfuhl over a period of 8 months, Warren over a period of 6 weeks, and Smith over a period of 18 months. Each round-trip voyage of the *City of Fort Worth* is scheduled to take about 25 days.

shipping articles.[16] We find, accordingly, that on July 25, 1938, the employment of the five men named in the complaint did not automatically terminate, but that they were discharged by the respondent on that day.[17]

2. The "Sit-Down" Strike.

In its answer to the complaint, the respondent alleges, *inter-alia*, that the employees named in the complaint "unlawfully took possession of said steamship and solicited, incited and stirred up other members of the crew of said steamship to disobey and resist the lawful orders of the master and other officers of said steamship and to refuse to perform their proper duties on board said steamship." During the hearing the respondent sought to show that the union members took possession of the *City of Fort Worth* "or portions thereof" and "explicitly engaged in a sit-down strike and were guilty of unlawful acts and were trespassers." Accordingly the respondent argues that it was justified in refusing to re-ship the five seamen named in the complaint. The respondent's contention finds no support in the record.

We have found above that the strike was caused and prolonged by reason of the respondent's unlawful refusal to bargain collectively with the Union. The strike continued for 11 hours during which the striking employees refused to work and sat down on the poop deck. The *City of Fort*

[16] In *N. L. R. B. v. Waterman Steamship Corp., cit. supra.*, the Supreme Court, after reviewing evidence in support of a similar finding of the Board, stated that "maritime people generally" have recognized that tenure of employment does not terminate with the expiration of shipping articles. See also *Matter of South Atlantic Steamship Company of Delaware and National Maritime Union of America*, 12 N. L. R. B. 1367; *Matter of The Texas Company, Marine Division and National Maritime Union, Port Arthur Branch*, 19 N. L. R. B., No. 89; and *Matter of Calmar Steamship Corporation and National Maritime Union of America, et al.*, 18 N. L. R. B. No. 1.

[17] Even were we to assume that the employee status of these seamen did in fact cease with the termination of their shipping articles, it is undenied that they were refused reemployment. A discriminatory refusal to employ is no less a violation of the Act than is a discriminatory discharge. See *Matter of Waumbec Mills, Inc. and United Textile Workers of America*, 15 N. L. R. B. 37. The respondent's contention is thus no defense, in any event, to an alleged violation of Section 8 (3) of the Act.

Worth was moored to the dock at Houston during the entire day and the refusal of the strikers to perform their duties in no manner endangered the safety of the ship.[18] Moreover, the strikers neither unlawfully seized any portion of the ship nor despoiled any of the respondent's property thereon.[19] The striking employees merely sat on the poop deck, the usual place of meeting and recreation for members of the crew when off duty; the ship "remained fully in the possession of the respondent and its authorized officers"[20] and the work of loading the ship proceeded without delay. No attempt was made by the strikers to interfere with the normal operations on shipboard, and as we have noted, the vessel sailed on schedule at the conclusion of the strike on the same day. At no time did the strikers claim to hold the ship in defiance of the right of possession of the owner nor did their presence on shipboard constitute a trespass.[21] Unlike an industrial plant, a ship is not only the place of

[18] See *N. L. R. B. v. Black Diamond S. S. Corporation*, 94 F. (2d) 875 (C. C. A. 2), enf'g *Matter of Black Diamond Steamship Corporation and Marine Engineers' Beneficial Association, Local No. 33*, 3 N. L. R. B. 84, and *Cf. Rees v. United States*, 95 F. (2d) 784 (C. C. A. 4), in which the Court found that the ship upon which a strike occurred "was not in fact moored to the dock or at anchor in a safe harbor, but was in such a position that the obedience of the crew to the order of the master was essential to her safety."

[19] *Cf. N. L. R. B. v. Fansteel Metallurgical Corporation*, 306 U. S. 240, aff'g 98 F. (2d) 375 (C. C. A. 7), enf'g as mod., *Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Local 661*, 5 N. L. R. B. 930, and *McNeely & Price Company v. N. L. R. B.*, 106 F. (2d) 878 (C. C. A. 3), enf'g as mod., *Matter of McNeely & Price Company and National Leather Workers Association, Local No. 30, of the C. I. O.*, 6 N. L. R. B. 800.

[20] *Cf. N. L. R. B. v. Stackpole Carbon Cimpany*, 105 F. (2d) 167 (C. C. A. 3), enf'g as mod., *Matter of Stackpole Carbon Company and United Electrical & Radio Workers of America, Local No. 502*, 6 N. L. R. B. 171.

[21] See *American Manufacturing Co. v. N. L. R. B.*, 60 Sup. Ct. 612, aff'g as mod., 106 F. (2d) 61 (C. C. A. 3), enf'g as mod., *Matter of American Manufacturing Company; Company Union of the American Manufacturing Company; the Collective Bargaining Committee of the Brooklyn Plant of the American Manufacturing Company and Textile Workers' Organizing Committee, C. I. O.*, 5 N. L. R. B. 443, in which the court stated:

> We do not regard the action of these or other employees in standing around the premises for a period of not more than two hours, while an attempt was being made to persuade the Company to fix a date for collective bargaining with T. W. O. C., as in the nature of a sit-down strike which would permit the termination of the employee relationship. They certainly were not claiming to hold the premises in defiance of the right of possession of the owner and we regard the case as no different from that of an ordinary strike where work has ceased because of an unfair labor practice.

employment but also the living quarters of the crew. Consequently their mere presence on the ship, in the absence of interference with its control by the respondent's officers could not constitute a trespass, nor were the strikers regarded as trespassers by the captain or other officers of the ship. At no time were the strikers ordered to leave the ship.[22]

The evidence affords no basis for finding that the conduct of the union members during the strike projected them outside the framework of protection afforded by the Act. We find that the respondent was not warranted in discharging any of the union members solely because of their collective activity in striking.

3. The Alleged Breach of Contract.

The respondent contends that the striking members of the crew, by wilfully disobeying the lawful commands of the master and other officers of the *City of Fort Worth* and by refusing to perform their proper duties on board this ship, breached their shipping articles and thereby afforded ample and lawful cause for the discharges. Maritime employees who sign shipping articles agree:

> to conduct themselves in an orderly, faithful, honest and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of said master . . . and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore.

According to the respondent, by engaging in the strike and failing to "turn to" at the command of the master, the union members breached their shipping articles which constituted their contract of employment with the respondent.

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[22] During oral argument before the Board, counsel for the respondent asserted that the conduct of the strikers in remaining on board was considered less serious than if they had left the vessel.

The fact that the striking seamen refused to obey the respondent's orders during the strike is not in dispute. The mere fact that such refusal constituted a breach of contract, however, is immaterial to the issues here involved.[23] We recognize that an employer may lawfully discharge his employees because of their failure to obey his orders or their refusal to perform their duties, whether or not such failure or refusal constitutes a breach of an express contract of employment. The undertaking by employees that they will obey the orders of their employer and perform their duties is necessarily implicit in every form of hire and tenure of employment. Whenever employees during a labor dispute cease work in order to strike, necessarily during the period of the strike they neither obey their employer's orders nor perform the duties for which they were hired. Nonetheless they remain employees within the meaning of the Act [24] and are entitled to the protection afforded under the Act against discrimination by the employer.[25]

We have found that the strike herein was attributable to the respondent's unlawful refusal to bargain collectively with the Union and that the conduct of the union members during the strike was in no manner unlawful or otherwise beyond the limits of permissible activity. We therefore find untenable the respondent's contention that the discharges were lawful and justified because the strike in effect constituted a breach of contract.[26]

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[23] An agreement not to strike, when validly entered into by a labor organization as a result of collective bargaining, is, of course, binding upon the members of the labor organization. Shipping articles, however, are individual contracts and cannot lawfully be construed under the Act as requiring that each seaman renounce the right to self-organization and collective bargaining or under normal circumstances refrain from striking in order to protect such right. *Cf. Matter of Arcade-Sunshine Company, Inc. and Laundry Workers, Cleaners & Dyers Union*, 12 N. L. R. B. 259.

[24] Section 2 (3) of the Act.

[25] *Black Diamond S. S. Corporation v. N. L. R. B.*, 94 F. (2d) 875 (C. C. A. 2), enf'd *Matter of Black Diamond Steamship Corporation and Marine Engineers Beneficial Association, Local No. 33*, 3 N. L. R. B. 84.

[26] *Cf. N. L. R. B. v. Sands Manufacturing Company*, 306 U. S. 332, wherein the Court found that the repudiation by the employees of their agreement was not caused by any unfair labor practices of the employer.

It should be noted moreover that the employees named in the complaint were not discharged forthwith upon their failure to "turn to" but were permitted to

4. Defenses With Respect to the Individual Discharges.

Although the defenses discussed above were the only defenses assigned by the respondent in its answer for the discharges of the five seamen named in the complaint, during the hearing the respondent sought to show that in addition there existed other causes for the discharges.

a. *John J. Tracey and Elmer J. Ferguson.*

Tracey had been employed continuously by the respondent since March 10, 1937, as an oiler, fireman, and wiper. He was the engine-division delegate of the Union and had obtained the memberships of nine members of the crew. Ferguson, a fireman, had been employed continuously by the respondent since July 1937. Although Ferguson held no office in the Union, we have observed his activity at the beginning of the strike on July 18.

The respondent's witnesses admitted that Tracey and Ferguson were selected for discharge solely because of their acts during the strike. Second Assistant Engineer Robinson testified that Tracey had "threatened" him when he told the oiler that he was going to put the steam on deck himself. According to Robinson, Tracey had replied, "You had better not. You will be sorry." Robinson further testified that when he began to turn on the steam, Tracey said, "Go ahead, you won't have any after 8 o'clock." According to Tracey's testimony, he merely asked Robinson, "Sec-

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work for 7 days until the ship docked in Philadelphia. Even assuming the validity of the respondent's contention that the breach of the shipping articles afforded justification for the discharges, it may reasonably be argued that the respondent, in continuing to avail itself of the employees' services for a period of 7 days after the alleged breach of contract, waived such breach.

. . . In the law of Master and Servant, if the Master has cause justifying the discharge of the servant, and nevertheless continues, with knowledge of the facts, to receive the benefit of the servant's services, he cannot afterwards make the breach ground for discharge. . . .

. . . The employer has no right, whether he desires it or not and whatever intention he manifests, to continue employment and yet retain the privilege of asserting a breach of condition. It is true that an employee may consent to be retained on such terms, but his clearly manifested assent is necessary, for it cannot be presumed . . . Williston on *Contracts*, Rev. Ed., Vol. 3, S. 725, p. 2062.

ond are you going to light the fires?", and that when Robinson answered in the affirmative, he replied, "That's all I want to know."

Even accepting Robinson's version of the incident we do not believe that Tracey's statements can be construed as threatening, and it is apparent from the testimony that they were not so construed by Robinson. On cross-examination Robinson stated that he recommended Tracey's discharge because the latter had given him "back talk."

The evidence is plain that both Tracey and Ferguson were discharged because of the leading parts they played in the strike. Chief Engineer Norton testified that he did not recommend Ferguson's discharge merely because he had disobeyed orders. "I would have overlooked that had he taken the fires until we got straightened out." Captain Rudan testified that he discharged both these men upon Norton's complaint that "they had been on watch at the time of the commencement of this what I consider disobedience, and if they had gone on watch at the time, that the rest of the men probably would have followed . . ."

We find that the respondent, by discharging Tracey and Ferguson, discriminated in regard to their hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

At the time of their discharge Tracey and Ferguson were earning $85 and $75 a month, respectively, plus maintenance on shipboard. At the time of the hearing neither had been employed since his discharge.

b. *John Pfuhl, Jr.*

Pfuhl, an able seaman, had been continuously employed by the respondent since November 24, 1937. He joined the Union on June 30, 1938, and participated in the strike of July 18.

At the hearing the respondent sought to show that in addition to having engaged in the strike, Pfuhl had been convicted of petit larceny prior to his employment by the respondent and had been arrested for larceny during his employment, and that his criminal record, taken in conjunction with his inefficiency and negligence as an employee, warranted his discharge.

Captain Rudan testified that Pfuhl had served under three mates and that all had complained that he was a slow worker. Pfuhl admitted that a complaint had been made concerning his work on his first voyage in November 1937, but he testified that no complaint was made thereafter. Since Pfuhl was re-shipped several times despite his alleged slowness, we do not believe that this was a motivating factor in his discharge.[27] There was testimony that on two occasions Pfuhl negligently spilled paint on the deck. He had been re-shipped, however, after he had spilled paint on the first occasion, and the testimony shows that the second offense was not brought to the respondent's attention until after the respondent's officers had decided to discharge him. Moreover, on several occasions other seamen had spilled paint and had not been disciplined.

Finally, the respondent urges that prior to his employment, Pfuhl had been convicted of petit larceny and that during his employment he had been arrested for a similar offense. That Pfuhl's criminal record was not disturbing to the respondent and was not the cause of his discharge is plain from the testimony. The respondent did not find Pfuhl an undesirable employee after his arrest since he was permitted to continue in the respondent's employ and the officers of the ship apparently had no knowledge of his previous conviction at the time they decided to discharge him.

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[27] *Montgomery Ward & Co. v. National Labor Relations Board*, 107 F. (2d) 555 (C. C. A. 7), enf'g as mod., *Matter of Montgomery Ward & Company and Reuben Litzenberger, et al.*, 9 N. L. R. B. 538, wherein the Court stated, "Although long service does not necessarily indicate efficiency, it does indicate that the employee's work is not considered so unsatisfactory as to merit discharge."

Captain Rudan's testimony makes it abundantly clear that the motivating factor in the respondent's decision to discharge Pfuhl was his participation in the strike. Presumably Pfuhl's personal record did not disqualify him as an employee, according to the respondent, but did constitute a bar to his union activity. "After being lenient with him," Rudan explained, "he had indulged in this disobedience down there."

We find that the respondent, by discharging Pfuhl, discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

At the time of his discharge Pfuhl was earning $75 per month plus maintenance on shipboard. Between the date of his discharge and the date of the hearing, he secured two temporary jobs on which he earned a total of $182.50, plus maintenance on shipboard during one of these periods of employment.

c. *Joseph G. Warren.*

Warren, an able seaman, had been continuously employed by the respondent for about 6 weeks prior to his discharge. Warren was the deck delegate of the Union and the recognized leader of the strikers.

The respondent urges as contributing factors in its selection of Warren for discharge, his intoxication on three occasions during the period of his employment, and his arrest for cursing. About a month prior to his discharge Warren became intoxicated and was unable to work for 1 day. On the second occasion, Warren reported to work late. Warren's third spree occurred while he was off duty.

We entertain no doubt that an employee's intoxication provides ample reason for his discharge. We believe, however, that the respondent did not discharge Warren for this reason, but rather that it seized upon his drinking proclivities to rid itself of an active union officer. We have observed that the respondent did not ascribe Warren's

drunkenness as the reason for his discharge in its answer to the complaint. Warren had been re-shipped after his arrest and after two instances of intoxication. Moreover, the evidence shows that beer is sold on board the *City of Fort Worth* and that it is not uncommon for seamen to become intoxicated.

We find that the respondent, by discharging Warren, discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

At the time of his discharge, Warren was earning $75 per month plus maintenance on shipboard. Warren did not appear at the hearing and the record does not show the amount of his earnings, if any, since his discharge.

d. *Edward W. Smith.*

Smith, the crew messboy, was the steward delegate of the Union. At the time of his discharge, he had been employed continuously by the respondent for approximately 18 months. Kuhtreiber, the steward, testified that Smith was surly and did not do his work properly, that he quarreled with the cook, and that the cook had requested that he be discharged. Kuhtreiber admitted, however, that these facts were reported to the Captain about 3 months prior to Smith's discharge.

Smith was admittedly popular with the crew and was re-shipped several times after the reports of his alleged shortcomings. Kuhtreiber freely admitted that he recommended that Smith be discharged because he wanted "to put his head a little bit wise," and that he intended at the time Smith was discharged to reemploy him within a short time. On cross-examination Sherry admitted that Smith was discharged because of his participation in the strike.

We find that the respondent, by discharging Smith, discriminated in regard to his hire and tenure of employment,

thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

At the time of his discharge Smith was earning $52 per month, plus maintenance on board the ship. At the time of the hearing, Smith had earned $36 since his discharge on a trial run of a United States cruiser.

IV. The Effect of the Unfair Labor Practices Upon Commerce.

The activities of the respondent set forth in Section III A, B, and C above, occurring in connection with its operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY.

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist from such practices and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the respondent refused to bargain collectively with the Union as the exclusive representative of its employees within an appropriate unit, we shall order the respondent, upon request, to bargain with the Union as such representative.

We have found that the respondent, by discharging John J. Tracey, Elmer J. Ferguson, Joseph G. Warren, John Pfuhl, Jr., and Edward W. Smth, discriminated against them in regard to their hire and tenure of employment. We shall therefore order the respondent to reinstate these employees to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, and to make them whole by payment to John J. Tracey, Elmer J. Ferguson, Joseph G.

Warren, and Edward W. Smith, respectively, of a sum of money equal to the amount he would normally have earned as wages from July 25, 1938, the date of the discrimination against him, to the date of the offer of reinstatement, including the value of maintenance on shipboard calculated at the rate of $2.35 per day,[28] less his net earnings [29] during such period. There shall be added to the amount thus due to Ferguson, the bonus of $25 to which he was entitled on the day of his discharge by reason of his continued service with the respondent. The Trial Examiner did not recommend the reinstatement of Pfuhl, because of his personal record. We shall not follow the recommendation of the Trial Examiner. The respondent has not shown, and indeed the record belies the respondent's contention, that a conviction for a misdemeanor disqualifies an employee for continued employment. The respondent, however, shall not be required to give Pfuhl back pay from February 25, 1939, the date of the Intermediate Report, to the date of this Decision. The back pay awarded Pfuhl will be a sum of money equal to the amount which he would have normally earned from July 25, 1938, to February 25, 1939, and from the date of this Decision to the date of offer of reinstatement, including the value of maintenance on shipboard, calculated at the rate of $2.35 per day, less his net earnings during such period.

Prior to the hearing, one of the seven strikers who went on strke on July 25, 1938, in protest against the discrimina-

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[28] The parties stipulated that the value of maintenance on shipboard was $2.35 per day.

[29] By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for the unlawful termination of his employment and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments, which supplied the funds for said work-relief projects.

tory discharges, had been reinstated. Since this strike was caused by the respondent's unfair labor practices, in order to effectuate the policies of the Act, we shall order the respondent, upon application, and upon the first available sailing date after such application, to offer to the other six employees who struck on July 25, 1938, reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing if necessary any employees since hired to replace them.[30]

We shall also order the respondent to make whole the said six persons for any loss of pay they may suffer by reason of any refusal of their application in accordance with the provision above, by payment to each of them a sum of money equal to the amount which he normally would have earned as wages, including the value of maintenance on shipboard, calculated at the rate of $2.35 per day, during the period from the date of any such refusal of his application to the date of reinstatement, less his net earnings during such period.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW.

1. National Maritime Union of America, affiliated with the C. I. O., is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of Joseph G. Warren, John Pfuhl, Jr., Elmer J. Ferguson, Edward W. Smith, and John J. Tracey, thereby discouraging membership in the National Maritime Union of America, affiliated with the C. I. O., the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

[30] See *Black Diamond Steamship Corporation v. N. L. R. B.*, 94 F. (2d) 875 (C. C. A. 2), enf'g *Matter of Black Diamond Steamship Corporation and Marine Beneficial Association, Local No. 33*, 3 N. L. R. B. 84.

3. The unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by the respondent, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. The National Maritime Union of America, affiliated with the C. I. O., is and at all times since January 26, 1938, has been, the exclusive representative of employees in such unit, for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing on or about January 26, 1938, and at all times thereafter, to bargain collectively with the National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of all its employees in such unit, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER.

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 ( ) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Southern Steamship Company, Philadelphia, Pennsylvania, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, affiliated with the C. I. O., or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any terms or conditons of their employment;

(b) Refusing to bargain collectively with the National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by the respondent;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in the deck, engine, and stewards' departments except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by the respondent, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Offer to Joseph S. Warren, John Pfuhl, Jr., Elmer J. Ferguson, Edward W. Smith, and John J. Tracey immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed by them;

(c) Make whole Joseph G. Warren, Elmer J. Ferguson, Edward W. Smith, and John J. Tracey for any loss of pay they may have suffered by reason of the respondent's discrimination in regard to their hire and tenure of employment, by payment to each of them of a sum of money equal to that which he would normally have earned as wages, including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day, from July 25, 1938, to the date on which the respondent offers him reinstatement (and adding thereto in the case of Elmer J. Ferguson the bonus of $25 due him on the date of his discharge), less his net earnings during said period; provided, however, that the respondent shall deduct from the amount thus due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole John Pfuhl, Jr., for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment, by payment to him of a sum of money equal to that which he would normally have earned as wages, including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day, from July 25, 1938, to February 25, 1939, and from the date of this Decision to the date of offer of reinstatement, less his net earnings during said period; provided, however, that the respondent shall deduct from the amount thus due him, monies received by

him during such period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Upon application, and upon the first available sailing date after such application, offer to William Reeves, Henry A. Lathan, William Godfrey Burns, Edward B. Hughes, Gordon Neeley, and Charles C. Holt, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed by them, dismissing, if necessary, those who have been hired to replace them;

(f) Make whole William Reeves, Henry A. Lathan, William Godfrey Burns, Edward B. Hughes, Gordon Neeley, and Charles C. Holt, for any loss of pay they may suffer by reason of any refusal of their applications for reinstatement, as provided in the section entitled "The Remedy," by payment to each of them a sum of money equal to that which he would normally have earned as wages, including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day, from the date of any such refusal of his application to the date of offer of reinstatement, less his net earnings during said period; provided, however, that the respondent shall deduct from the amount thus due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(g) Post immediately notices to its employees in conspicuous places on its docks and on its vessels, and main-

tain such notices for a period of at least sixty (60) consecutive days from the date of the posting, stating; (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; (2) that the respondent will take the affirmative action required by paragraphs 2 (a), (b), (c), (d), (e) and (f) of this Order; and (3) that the respondent's employees are free to become or remain members of the National Maritime Union of America, affiliated with the C. I. O. and that it will not discriminate against any employee because of membership or activity in that organization;

(h) Notify the Regional Director for the Fourth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 22nd day of April 1940.

J. Warren Madden
Chairman
Edwin S. Smith
Member
Wm. M. Leiserson
Member

(Seal) NATIONAL LABOR RELATIONS BOARD

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW AND REQUEST FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE THIRD CIRCUIT.

No. 7435.

October Term, 1940.

Southern Steamship Company,
Petitioner,

v.

National Labor Relations Board,
Respondent.

ON PETITION TO REVIEW AND SET ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, U. S. C. Supp. IV, Title 29, Sec. 151 *et seq.*), files this answer to the petition to review, filed herein, and this request for enforcement of an order of the National Labor Relations Board.

1. The Board admits the allegations contained in paragraphs 1, 2, and 8 of the petition to review.

2. Answering the allegations contained in paragraphs 3 to 7, inclusive, of the petition to review, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board, filed herein, for a full

and exact statement of the pleadings, evidence, rulings of the Trial Examiner, findings of fact, conclusions of law and order of the Board, and all other proceedings had in said matter before the Board.

3. The Board denies each and every allegation of error contained in paragraphs 9 to 34, inclusive, of the petition to review and avers that its said order is valid and proper in all respects.

WHEREFORE, having answered each and every allegation contained in the petition to review, the Board prays this Honorable Court that said petition be denied in so far as it prays that the order of the Board be set aside, vacated, and annulled.

FURTHER ANSWERING, the Board, pursuant to Section 10 (e) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of the order issued by the Board in the proceedings instituted against petitioner, Southern Steamship Company, said proceedings being known upon the records of the Board as Case No. C-1204, the title thereof being "*In the Matter of Southern Steamship Company* and *National Maritime Union Of America (affiliated with the C. I. O.)*."

In support of this request for enforcement of its order, the Board respectfully shows as follows:

(a) Petitioner being a Delaware corporation residing within this judicial circuit, this Court has jurisdiction of the petition to review herein and this request for enforcement, by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, a complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, the Trial

Examiner's report, exceptions filed thereto, brief in support of said exceptions and oral argument before the Board, the Board, on April 22, 1940, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Southern Steamship Company, Philadelphia, Pennsylvania, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, affiliated with the C. I. O., or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any terms or conditions of their employment;

(b) Refusing to bargain collectively with the National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by the respondent;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through represen-

tatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by the respondent, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Offer to Joseph J. Warren, John Pfuhl, Jr., Elmer J. Ferguson, Edward W. Smith, and John J. Tracey immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed by them;

(c) Make whole Joseph G. Warren, Elmer J. Ferguson, Edward W. Smith, and John J. Tracey for any loss of pay they may have suffered by reason of the respondent's discrimination in regard to their hire and tenure of employment, by payment to each of them of a sum of money equal to that which he would normally have earned as wages, including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day, from July 25, 1938, to the date on which the respondent offers him reinstatement (and adding thereto in the case of Elmer J. Ferguson the bonus of $25 due him on the date of his discharge), less his net earnings during said period; provided, however, that the respondent shall deduct from the amount thus

due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole John Pfuhl, Jr., for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment, by payment to him of a sum of money equal to that which he would normally have earned as wages, including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day, from July 25, 1938, to February 25, 1939, and from the date of this Decision to the date of offer of reinstatement, less his net earnings during said period; provided, however, that the respondent shall deduct from the amount thus due him, monies received by him during such period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Upon application, and upon the first available sailing date after such application, offer to William Reeves, Henry A. Lathan, William Godfrey Burns, Edward B. Hughes, Gordon Neeley, and Charles C. Holt, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed by them, dismissing, if necessary, those who have been hired to replace them;

(f) Make whole William Reeves, Henry A. Latban, William Godfrey Burns, Edward B. Hughes,

Gordon Neeley, and Charles C. Holt, for any loss of pay they may suffer by reason of any refusal of their applications for reinstatement, as provided in the section entitled "The Remedy," by payment to each of them a sum of money equal to that which he would normally have earned as wages, including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day, from the date of any such refusal of his application to the date of offer of reinstatement, less his net earnings during said period; provided, however, that the respondent shall deduct from the amount thus due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(g) Post immediately notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of the posting, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; (2) that the respondent will take the affirmative action required by paragraphs 2 (a), (b), (c), (d), (e), and (f) of this Order; and (3) that the respondent's employees are free to become or remain members of the National Maritime Union of America, affiliated with the C. I. O. and that it will not discriminate against any employee because of membership or activity in that organization;

(h) Notify the Regional Director for the Fourth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(c) On April 22, 1940, the Board's decision and order was served on petitioner by sending a copy thereof, postpaid, bearing government frank, by registered mail, to Messrs. Randolph W. Childs and Edgar S. McKaig, of Messrs. Adams, Childs, McKaig & Lukens, in Philadelphia, Pennsylvania, representing petitioner.

(d) Pursuant to Section 10 (f) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law and order of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and the transcript to be served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and proceedings set forth in the transcript, and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board set forth above, and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,

By ROBERT B. WATTS,
Robert B. Watts,
Associate General Counsel.

Dated at Washington, D. C.,
this 13th day of June, 1940.

DISTRICT OF COLUMBIA, *ss.:*

ROBERT B. WATTS, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board, that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

ROBERT B. WATTS,
Robert B. Watts,
Associate General Counsel.

Subscribed and sworn to before me this 13th day of June, 1940.

JOHN E. LAWYER,
Notary Public, District of Columbia.
My commission expires August 31, 1944.

ANSWER AND REPLY OF SOUTHERN STEAMSHIP COMPANY, PETITIONER, TO ANSWER OF RESPONDENT AND REQUEST OF RESPONDENT FOR ENFORCEMENT OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The answer and reply of Southern Steamship Company, petitioner, to the answer of respondent and request of respondent for enforcement of the order of the National Labor Relations Board of April 22, 1940, respectfully shows and alleges:

1. The petitioner denies each and every allegation contained in paragraphs one, two and three of said answer, except such averments thereof as admitted the truth of the averments of the petition for review herein, or pray refer-

ence to the certified transcript of the record of the proceedings before the National Labor Relations Board herein.

2. Petitioner, by way of answer and reply to respondent's request for enforcement of the order of the National Labor Relations Board of April 22, 1940, admits the averments contained in paragraphs (a), (b), (c), and (d) of respondent's request for enforcement of said order.

3. Petitioner, by way of further answer and reply to respondent's answer and request for enforcement, avers that said order so sought to be enforced by the National Labor Relations Board, for each and all of the reasons set forth herein and in the petition for review, is altogether invalid, void and of no legal effect whatsoever; that the petitioner adopts in this regard each and all of the averments contained in the petition for review heretofore filed herein with the same force and effect as if set forth in full herein.

WHEREFORE, petitioner, having made answer and reply to respondent's answer and request for enforcement, prays this Honorable Court to dismiss and hold for naught the request of the National Labor Relations Board herein for the enforcement of the alleged order of the National Labor Relations Board; to set aside, vacate and annul said alleged order of the National Labor Relations Board; and to dismiss the complaint herein against the petitioner as prayed for in the petition for review herein.

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

By CHARLES F. SHERRY.

ADAMS, CHILDS, MCKAIG AND LUKENS,
By RANDOLPH W. CHILDS,

RAWLE & HENDERSON,
By JOSEPH W. HENDERSON,
Counsel for Petitioner.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

CHARLES F. SHERRY, being duly sworn according to law, deposes and says that he is Marine Superintendent of Southern Steamship Company, the petitioner above named; that he is authorized to make this affidavit on behalf of the petitioner; that he has read the foregoing answer and reply of petitioner; that the statements therein contained are true as he verily believes.

CHARLES F. SHERRY.

Sworn to and subscribed before me this 10th day of July, A. D. 1940.

ISAAC B. ROSE,
(Seal) *Notary Public.*
My Commission Expires April 1, 1943.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD.

The National Labor Relations Board by its Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Southern Steamship Company and National Maritime Union of America, affiliated with the C. I. O.," the same being Case No. C-1204 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge filed by National Maritime Union of America, affiliated with the C. I. O., sworn to July 26, 1938.

2. Copy of amended charge filed by aforesaid Union, sworn to November 22, 1938.

3. Copy of complaint and notice of hearing issued by the National Labor Relations Board, dated November 23, 1938.

4. Copy of respondent's answer to the complaint, sworn to November 29, 1938.

5. Copy of motion to extend date of hearing, sworn to November 29, 1938.

6. Copy of order denying motion to extend date of hearing, dated November 30, 1938.

7. Certified copy of order designating William Seagle Trial Examiner for the National Labor Relations Board, dated December 2, 1938.

8. Copy of telegraphic notice of place of hearing, dated December 27, 1938.

9. Certified record "In the Matter of American France Line, et al. (* * * Southern Steamship Company * * *), and International Seamen's Union of America," the same being Case No. R-157 before the Board.

Documents listed hereinabove under items 1-8, inclusive, are contained in the exhibits and included under the following item:

10. Stenographic transcript of testimony before William Seagle, Trial Examiner for the National Labor Relations Board, on December 5, 6, 14, 21, 22, and 23, 1938, and on January 9, 1939, together with all exhibits introduced in evidence.

11. Copy of respondent's motion to dismiss the complaint.

12. Copy of respondent's objection to motion of Board that complaint be conformed to proof.

13. Copy of respondent's motion to strike out testimony, dated January 16, 1939.

14. Copy of Intermediate Report of Trial Examiner Seagle, dated February 24, 1939.

15. Copy of respondent's exceptions to Intermediate Report.

16. Copy of notice of hearing for purpose of oral argument, dated October 5, 1939.

17. Copy of list of appearances at oral argument held November 2, 1939.

18. Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board April 22, 1940.

IN TESTIMONY WHEREOF the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 13th day of June, 1940.

NATHAN WITT,
Nathan Witt,
(Seal) *Secretary National Labor Relations Board.*

LIST OF RELEVANT DOCKET ENTRIES.

IV-C-541.

7.26.38 Charge filed.

11.23.38 Complaint, notice of hearing and rules and regulations issued.

11.23.38 Amended charge filed.

11.23.38 Statement of service of complaint and notice of hearing filed by Bennett F. Schauffler.

11.29.38 Respondent's motion to extend date of hearing filed.

11.30.38 Order issued denying respondent's motion for extension of hearing date. Statement of service filed by Joseph F. Costiello.

12.1.38 Received two copies of respondent's motion and two copies of order denying motion.

12.1.38 Received two copies of respondent's answer to complaint.

12.2.38 Order issued designating William Seagle Trial Examiner

12.5.38 Hearing opened.

12.23.38 Hearing adjourned to January 9 in Houston, Texas at a place as may be communicated to parties by telegram.

12.27.38 Telegraphic notice of place of hearing issued.

1.9.39 Hearing closed.

1.25.39 Received from Trial Examiner: 3 copies of motion to dismiss complaint; 3 copies of motion to strike testimony; and 3 copies of exception and objection to Board motion that complaint be conformed to the proof.

2.25.39 Intermediate Report filed and served. Case transferred to Board.

C-1204.

2.27.39 Original and one copy of Intermediate Report received.

2.28.39 Affidavits of service of Intermediate Report filed by Helen C. Reiner.

3.8.39 Four copies of respondent's exceptions to Intermediate Report, together with request for oral argument and permission to file brief, personally served and filed.

3.10.39 All parties granted until April 10, 1939 for filing brief.

4.8.39 Four copies of respondent's brief in support of exceptions received.

10.5.39 Notice of hearing for purpose of oral argument issued.

11.2.39 Oral argument held before Messrs. Madden and Leiserson. Appeared: For Company, Childs & Henderson; for Union, Lustig; for Board, Ray Johnson.

4.22.40 Decision, findings of fact, conclusions and order issued by the National Labor Relations Board. Affidavit of service filed by Perry H. Culley.

BOARD'S EXHIBIT NO. 1.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

CASE NO. IV-C-541.

In the Matter of
Southern Steamship Company
and
National Maritime Union of America
(Affiliated with the C. I. O.)

I hereby certify that the attached:

Charge;

Amended Charge;

Complaint and Notice of Hearing;

Rules and Regulations, Series 1, as amended;

Certifications of Service of Complaint and Notice of Hearing;

Motion to Extend Date of Hearing;

Order Denying Motion to Extend Date of Hearing;

Certification of Service of Order Denying Motion to Extend Date of Hearing;

Answer of Respondent

are true and correct copies of the originals on file in this office.

BENNET F. SCHAUFFLER
BENNET F. SCHAUFFLER

CHARGE.

(Copy)

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Southern Steamship Company, Pier 46 South, Philadelphia, Pennsylvania has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) and (5) of said Act, in that

1. On July 25th, 1938, it by its officers, agents and employees terminated the employment of JOSEPH G. WARREN, A. B.; JOHN PFUHL, JR., A. B.; ELMER J. FERGUSON, Fireman; EDWARD W. SMITH, Messboy; and JOHN J. TRACEY, Oiler, aboard the S. S. "City of Fort Worth", because of their membership in and activities on behalf of the NATIONAL MARITIME UNION OF AMERICA, affiliated with the Committee for Industrial Organization, a labor organization within the meaning of Section 2, subsection (5) of said Act. At all times since date, it has refused and does now refuse to employ said JOSEPH G. WARREN, JOHN PFUHL, JR., ELMER J. FERGUSON, EDWARD W. SMITH, AND JOHN J. TRACEY.

2. That prior to July 25th, 1938 and at all times subsequent thereto, it by its officers, agents and employees refused to bargain collectively with the authorized agents of the NATIONAL MARITIME UNION OF AMERICA, a labor organization within the meaning of Section 2, subsection (5) of said Act chosen by a majority of its employees to represent them for the purposes of collective bargaining regarding rates of pay, hours of employment and other conditions of employment.

3. By the acts set forth in the paragraphs above and by other conduct, it, by its officers, agents and employees, attempted to interfere with, restrain and coerce its employees in the exercise of the rights guaranteed to them in Section 7 of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NATIONAL MARITIME UNION OF AMERICA,
affiliated with Committee for Industrial Organization.

By: /s/ Paul Palazzi Agent
Marine Building
Philadelphia, Pa.

Subscribed and sworn to before me this 26 day of July, 1938, at Phila., Pa.

/s/ John E. Johnson
NLRB—Examiner

AMENDED CHARGE.

(Copy)

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Southern Steamship Company, Pier 46 South, Philadelphia, Pennsylvania has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) and (5) of said Act, in that

1. On January 26, 1938, the National Labor Relations Board did designate the National Maritime Union of America, affiliated with the C. I. O., as the exclusive bargaining agent of all the unlicensed personnel of the Company employed in the deck, engine and stewards departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses

on vessels operated by the Company out of Atlantic and Gulf ports.

2. That at all times since said designation, the Company, through its officers, agents and employees, refused to bargain with the authorized agents of the National Maritime Union of America, although requested to do so on many occasions.

3. That as a result of said refusal, the employees of the Company engaged as unlicensed personnel in the unit described in paragraph 1, on the Company's steamship City of Fort Worth, did, on July 18, 1938, at Houston, Texas, call a strike.

4. This strike ended July 18, 1938, by agreement of the Company to bargain collectively, to issue passes to representatives of the National Maritime Union of America, and not to discriminate against any who participated in the strike.

5. On July 25, 1938, the Company by its officers, agents and employees, terminated the employment of Joseph G. Warren, A. B.; John Pfuhl, Jr., A. B.; Elmer J. Ferguson, Fireman; Edward W. Smith, Messboy; and John J. Tracey, Oiler, aboard the S. S. City of Fort Worth, because of their membership in and activities on behalf of the National Maritime Union of America, affiliated with the C. I. O., a labor organization within the meaning of Section 2, subsection (5) of said Act. At all times since said date, it has refused and does now refuse to employ said Joseph G. Warren, John Pfuhl, Jr., Elmer J. Ferguson, Edward W. Smith, and John J. Tracey.

6. That on July 25, 1938, as a result of the discharges as set forth in paragraph 5, many employees of the unlicensed personnel in the unit described in paragraph 1, aboard the S. S. City of Fort Worth, went on strike. These employees are: Charles Holt, Alex Braun, William Reeves, William G. Burns, Henry A. Latham, Edward S. Hughes, Gordon Neeley, and Joe Crassovaz.

7. That by the acts of the Company set forth in the paragraphs above, and by other conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of said Act, and did, by these acts, violate Sections 8 (1), (3) and (5) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NATIONAL MARITIME UNION OF AMERICA,
affiliated with the C. I. O.
By: (s) PHILIP DORFMAN, Attorney

Subscribed and sworn to before me this 22nd day of November, 1938, at Philadelphia, Pa.

(s) RALPH P. WINTERS
Examiner—N. L. R. B.

COMPLAINT.

It having been charged by the National Maritime Union of America (affiliated with the C. I. O.) that the Southern Steamship Company, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, hereinafter referred to as the said Act, the National Labor Relations Board by the Regional Director for the Fourth Region, as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, Section 1, hereby issues its complaint and alleges the following:

The respondent, the Southern Steamship Company, is and has been for a long time past, a corporation organized

and existing by virtue of the laws of the State of Delaware, and was on, to wit, May 7, 1935, authorized to do business in the Commonwealth of Pennsylvania, with its principal office in the City of Philadelphia, County of Philadelphia, in the Commonwealth of Pennsylvania, and is now and has continuously for a long time, been engaged in the operation of steamers for the carriage of freight in interstate commerce, and, more particularly, between the Ports of Philadelphia, in the Commonwealth of Pennsylvania, and Houston, in the State of Texas.

2. The National Maritime Union of America (affiliated with the C. I. O.), hereafter referred to as the Union, is a labor organization within the meaning of Section 2, subdivision (5) of the said Act.

3. The employees of the respondent engaged as unlicensed personnel employed in the deck, engine and steward's departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses on vessels operated out of Atlantic and Gulf ports by respondent, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9, subsection (b) of said Act, (hereinafter referred to as the said Unit).

4. On January 26, 1938, the National Labor Relations Board, by virtue of and pursuant to the power vested in it by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of the National Labor Relations Board Rules and Regulations, Series 1, as amended, did certify the Union as the exclusive representative of all such employees described in said Unit, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment because of its selection by the majority of said employees.

5. In and about the months of January, February, March and April, 1938, and thereafter, and on, to wit, Au-

gust 18, 1938, the said Union, by its duly authorized representatives, did request the respondent, through its officers and agents, to bargain collectively with regard to rates of pay, wages, hours of employment and other conditions of employment of the said unlicensed personnel described in said Unit, with it as the exclusive representative of all the said employees in said Unit.

6. In or about said dates and at all times thereafter, the respondent, through its officers and agents, did fail and refuse, and has failed and refused, and continues to fail and refuse to bargain collectively with the Union as the exclusive representative of all the employees in the said Unit.

7. By the acts of the respondent, as described above in paragraph 6, it has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, subsection (5) of said Act.

8. As the result of the acts of the respondent set out in paragraphs 6 and 7, on or about July 18, 1938, there occurred a strike of the employees of the respondent in the said Unit employed on the respondent's steamship, City of Fort Worth, while docked in the Port of Houston, in the State of Texas. The strike terminated on July 18, 1938, because of the agreement of respondent to remedy the causes thereof.

9. Respondent on or about July 25, 1938, at the Port of Philadelphia, in the Commonwealth of Pennsylvania, did, by its officers and agents terminate the employment of Joseph G. Warren, John Pfuhl, Jr., Elmer J. Ferguson, Edward W. Smith and John J. Tracey, (hereinafter referred to as its said employees), all employed by it for duty on its said steamship, the City of Fort Worth; and said respondent has at all times since, refused to reinstate said employees.

10. The respondent terminated the employment of said employes and has failed and refused to reinstate said

employees because of their membership in and affiliation with said Union, and, more particularly, because said named employees had engaged in the aforesaid strike, described in paragraph 8 above, and because they had engaged in other concerted activities with other employees for the purposes of mutual aid and protection and for the purposes of collective bargaining.

11. By its termination of the employment of said employees and by its failure and refusal to reinstate said employees, the respondent did discriminate and is now discriminating in regard to the hire and tenure of the employment of the said employees, and did discourage and is now discouraging membership in the said Union; and did engage in and is thereby engaging in certain unfair labor practices within the meaning of Section 8, subsection (3), of the said Act.

12. By acts of respondent described in paragraphs 6, 7, 9, 10 and 11, and by divers other acts, the respondent did interfere with, restrain and coerce its employees, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act; and did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8, subsection (1), of the said Act.

13. As a result of the acts of the respondent set out in paragraphs 9, 10, 11 and 12, on or about July 25, 1938, there occurred a strike of the employees of the respondent in the said Unit employed on the aforementioned steamship, City of Fort Worth, while at dock in the Port of Philadelphia, in the Commonwealth of Pennsylvania.

14. The activities of the respondent set forth in paragraphs 6, 7, 8, 9, 10, 11, 12 and 13, occurring in connection with the operations of the respondent described in paragraph 1, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening commerce and the free flow of commerce.

WHEREFORE, the National Labor Relations Board, on the 23d day of November, 1938, issues its Complaint against the Southern Steamship Company, the respondent herein.

NOTICE OF HEARING.

PLEASE TAKE NOTICE that on the 5th day of December, 1938, at 10.00 o'clock in the forenoon, in the Fourth Regional Office, National Labor Relations Board, Room 1432, Bankers Securities Building, Walnut and Juniper Streets, Philadelphia, Pennsylvania, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner, to be designated in accordance with its Rules and Regulations, Series 1, as amended, Article IV, Section 2, and Article II, Section 23, on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Fourth Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the Complaint attached hereto, on or before November 30, 1938.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Fourth Region on the 23d day of November, 1938.

/s/ BENNET F. SCHAUFFLER, Regional Director for the Fourth Region,
1432 Bankers Securities Building,
Philadelphia, Pennsylvania.

ANSWER OF SOUTHERN STEAMSHIP COMPANY.

(Copy)

SOUTHERN STEAMSHIP COMPANY, saving and reserving its rights under the Constitution of the United States and excepting and objecting to the jurisdiction of the National Labor Relations Board, in answer to the Complaint filed in the above entitled proceeding by the National Labor Relations Board, now and at all times denying the right of the complainant to assert any claim thereunder concerning Southern Steamship Company, and at all times saving and reserving unto itself all manner of benefit and advantage of exceptions which can or may be taken to the many errors, uncertainties, insufficiencies and other imperfections contained in the said Complaint, says:

This respondent Southern Steamship Company, denies that this respondent is engaged in and is engaging in any unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, and denies that the National Labor Relations Board, by the acting Regional Director for the Fourth Region, as agent of the National Labor Relations Board has issued complaint herein pursuant to and in accordance with any power vested in it by the provisions of said Act.

1. The respondent admits that it is and has been for a long time past, a corporation organized and existing by virtue of the laws of the State of Delaware and was on to wit. May 7th, 1935, authorized to do business in the Commonwealth of Pennsylvania, with its principal office in the City of Philadelphia, in the Commonwealth of Pennsylvania and is now and has continuously for a long time been engaged in the operation of steamships for the carriage of freight in interstate commerce and more particularly between the ports of Philadelphia in the Commonwealth of Pennsylvania and Houston in the State of Texas.

2. Respondent admits that National Maritime Union of America (affiliated with C. I. O.) referred to in the Com-

plaint as the "Union" is a labor organization within the meaning of Section 2 (Subdivision 5) of the said Act.

3. Respondent admits that the employees of the respondent engaged as unlicensed personnel employed in the deck, engine and steward departments, except wireless and radio operators, chief electricians on electrically driven ships and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 Subdivision (b) of said Act referred to in the Complaint as the said unit.

4. The respondent admits that on January 26th, 1938 the National Labor Relations Board did certify the Union as the exclusive representative of all of such employees described in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment. Except as expressly so admitted respondent denies each and every allegation set forth in paragraph 4 of the Complaint. The respondent avers that the certification on or about January 26th, 1938, by the National Labor Relations Board that the Union was the exclusive representative of all such employees described in said unit for the purposes of collective bargaining was invalid, erroneous, not supported by evidence, contrary to law and unenforceable.

Said certification was based upon an intermediate report upon secret ballot, made at New York, New York, on the third day of January, 1938, by Elinore M. Herrick, Regional Director for the Second Region, National Labor Relations Board. The respondent under date of January 7th, 1938, filed objections to said intermediate report and to said ballot with the National Labor Relations Board. A copy of said objections is hereto annexed, marked "Exhibit A," and made a part hereof. Among said objections was an objection to a finding of said Regional Director that the ballots were duly and fairly counted under the supervision of her agents and representatives of the interested parties,

and that statements to this effect from the representatives of the interested parties had been filed with the Regional Director, said objection stating that on the contrary no representative of the respondent signed any certificate or statement to the effect that said secret ballot was fairly or impartially conducted, or that the ballots were duly and fairly counted. Among said objections was an objection on the ground that the respondent's chosen representative was excluded by the agent of the National Labor Relations Board from the secret ballot taken on the steamship City of Houston on October 13th, 1937 and was denied access to said vessel owned by Southern Steamship Company during the conduct of said secret ballot and was not permitted to observe the conduct of said secret ballot or to identify voters. Among said objections was an objection that no representative of Southern Steamship Company was permitted to have access to the steamship City of Houston owned by Southern Steamship Company during the conduct of said secret ballot taken on said vessel on October 13th, 1937 and that no representative of Southern Steamship Company was permitted to observe the conduct of said secret ballot or to identify voters.

The National Labor Relations Board did not afford any hearing to the respondent on said objections or refer the issues raised by said objections to an examiner for hearing.

The National Labor Relations Board in its supplemental decision made on January 26th, 1938, did not consider any of the objections filed by the respondent except the objection that none of the respondent's representatives were permitted to be present at the balloting, and as to that objection erroneously held "that in the absence of consent by the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives".

5. The respondent denies each and every allegation set forth in paragraph 5 of the Complaint, except that respondent admits that on August 18th, 1938, the Union by one,

Paul Palazzi, purporting to act for National Maritime Union of America, wrote a letter to Southern Steamship Company, a copy of which, marked Exhibit B, is hereto annexed and made a part hereof, and that on August 23d, 1938, the respondent wrote a letter to said Paul Palazzi, a copy of which, marked Exhibit C, is hereto annexed and made a part hereof.

6. The respondent denies each and every allegation set forth in paragraph 6 of the Complaint except that it admits that on and after August 23d, 1938, it maintained its position that pending a judicial determination of the validity of the election and of said certification by the National Labor Relations Board, the respondent was not required to recognize the National Maritime Union of America as the exclusive representative of all its employees described in said unit for the purposes of collective bargaining. Respondent further avers that by reason of the unlawful acts hereinafter set forth it is not required to recognize said union as the exclusive representative of all of its employees described in said unit for the purposes of collective bargaining.

7. The respondent denies each and every allegation set forth in paragraph 7 of the Complaint.

8. The respondent denies each and every allegation set forth in paragraph 8 of the Complaint.

9. The respondent denies each and every allegation set forth in paragraph 9 of the Complaint, except that respondent admits that on or about July 25th, 1938, and thereafter it did not re-employ the persons named in paragraph 9 of the Complaint.

10. The respondent denies each and every allegation set forth in paragraph 10 of the Complaint.

11. The respondent denies each and every allegation set forth in paragraph 11 of the Complaint.

12. The respondent denies each and every allegation set forth in paragraph 12 of the Complaint.

13. The respondent denies each and every allegation set forth in paragraph 13 of the Complaint.

14. The respondent denies each and every allegation set forth in paragraph 14 of the Complaint.

For a further defence to the matters set forth in the Complaint respondent avers that the persons named in paragraph 9 of the Complaint on or about July 18th, 1938, after having signed shipping articles at the Port of Philadelphia, Pennsylvania, under the Shipping Laws of the United States for a complete voyage on the steamship City of Fort Worth from the Port of Philadelphia and return to that port, and while on board said steamship at the Port of Houston, wilfully disobeyed the lawful commands of the master and other officers on said steamship and from about 8 o'clock A. M. to 7 o'clock P. M. on July 18th, 1938, continued such wilful disobedience and unlawfully took possession of said steamship and solicited, incited and stirred up other members of the crew of said steamship to disobey and resist the lawful orders of the master and other officers of said steamship and to refuse to perform their proper duties on board said steamship.

For a further defence to the Complaint said respondent says that the practices complained of do not substantially lessen or affect interstate commerce, or the free flow of interstate commerce, or lead or tend to lead to a labor dispute burdening or obstructing interstate commerce or the free flow of interstate commerce.

For further answer to the said Complaint this respondent says that the Complaint of the National Labor Relations Board against this respondent Southern Steamship Company should be dismissed for the following reasons:

(a) Because all of the words, acts and conduct of this respondent were and have been within the legal and con-

stitutional rights of this respondent as guaranteed by the Constitution of the United States, and because this respondent has not violated any provisions of the National Labor Relations Act.

(b) Because the National Labor Relations Act does not prohibit the normal exercise of the right of Southern Steamship Company to select its employees, and further if construed to do so, it is in violation of the Constitution of the United States of America and because any and all failures to re-employ the persons named in the Complaint were lawful.

(c) Because the said Complaint is so indefinite that it does not inform the respondent of the issues to be met herein, and proceeding further hereunder is a denial to this respondent of due process of law.

(d) Because the issuance of such Complaint, the facts and circumstances surrounding the same and under which said Complaint was issued, the invalidity of the ballot and intermediate report on the basis whereof the National Labor Relations Board based its certification of the National Maritime Union of America as the sole bargaining agency, the failure of the National Labor Relations Board to pass upon many of the objections filed by the respondent to said ballot and intermediate report or to order a hearing upon said objections, the erroneous ruling of the National Labor Relations Board "that in the absence of consent by the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives," the obvious purpose and intent for which said Complaint was filed and the method of conducting proceedings and the procedure thereunder all constitute a denial to this respondent of due process of law, and the violation of the rights of this respondent guaranteed by the provisions of the Constitution of the United States of America.

(e) Because the National Labor Relations Board is altogether without jurisdiction to consider or determine

the charges set forth in the Complaint herein or to file the said Complaint, for the following reasons: The National Labor Relations Act, pursuant to which the National Labor Relations Board was created and vested with certain jurisdiction, power and authority, is altogether void and of no validity in law, as construed and applied by the National Labor Relations Board, because its terms and provisions, if enforced, would deprive employers sought to be made subject to its terms, of due process of law, in violation of the Fifth Amendment to the Constitution of the United States to this to wit; it provides for a hearing of the charges filed by an employee against his employer by the Board, or in the first instance by an agent or agency designated by the Board, with no restriction or limitation whatsoever as to the kind or character of evidence to be considered by the Board in support of or in answer to such charges, and further provides that the findings of the Board as to the facts, if supported by evidence, shall be conclusive in the premises.

(f) Because the employees of the respondent named or referred to in the Complaint had no lawful right to strike after having signed shipping articles for the voyage from the Port of Philadelphia, Pennsylvania, to the Port of Houston, Texas, and for the return voyage to said Port of Philadelphia.

(g) Because at the direction of said National Maritime Union of America the persons named in paragraph 9 of the Complaint on or about July 18th, 1938, after having signed shipping articles at the Port of Philadelphia, Pennsylvania, under the Shipping Laws of the United States for a complete voyage on the steamship City of Fort Worth from the Port of Philadelphia and return to that port, and while on board said steamship at the Port of Houston, wilfully disobeyed the lawful commands of the master and other officers on said steamship and from about 8 o'clock A. M. to 7 o'clock P. M. on July 18th, 1938, continued such wilful disobedience and unlawfully took possession of said

steamship and solicited, incited and stirred up other members of the crew of said steamship to disobey and resist the lawful orders of the master and other officers of said steamship and to refuse to perform their proper duties on board said steamship.

(h) Because the facts set forth in the Complaint are insufficient to furnish the basis of an action under the National Labor Relations Act.

SOUTHERN STEAMSHIP COMPANY,

By CHARLES F. SHERRY,
Marine Superintendent.
1360 Broad Street Station Bldg.,
Philadelphia, Pa.

ADAMS, CHILDS, MCKAIG & LUKENS,
Attorneys for Respondent,
Southern Steamship Company,
700 Integrity Bldg., Philadelphia, Pa.

STATE OF PENNSYLVANIA,
CITY OF PHILADELPHIA, } *ss.:*

On this 29th day of November, 1938, came CHARLES F. SHERRY, and says that he is Marine Superintendent of Southern Steamship Company and is authorized to make this affidavit, and that the facts set forth in the foregoing Answer to the Complaint of the National Labor Relations Board are true and correct to the best of his knowledge, information and belief and the respondent expects to be able to prove the same.

CHARLES F. SHERRY.

Sworn to and subscribed before me this 29th day of November, 1938.

BEATRICE M. LYNCH,
(Seal) *Notary Public.*
My commission expires April 16, 1939.

EXHIBIT "A."

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASE NO. R-157.

In the Matter of

Southern Steamship Company
(American France et al.)

and

National Maritime Union of America
(Affiliated with the C. I. O.),

and

International Seamen's Union of America, or Its Successor
(Affiliated with the A. F. of L.).

OBJECTIONS TO BALLOT AND INTERMEDIATE REPORT.

AND NOW, January 7th, 1938, SOUTHERN STEAMSHIP COMPANY objects to the Ballot and to the Intermediate Report made at New York, New York, on the 3rd day of January, 1938, by Elinore M. Herrick, Regional Director for the Second Region, National Labor Relations Board as follows:

1. To the finding relating to the conduct of said ballot, set forth in the Intermediate Report that "Full opportunity was accorded to all parties to this investigation to participate therein and to make challenges".

2. To the finding in the Intermediate Report that "At the conclusion of the balloting of each of the above vessels, the interested parties certified that the balloting was conducted in accordance with the specifications issued by the

National Labor Relations Board, and in a fair and impartial manner."

3. To the certification by the Regional Director for the Second Region, National Labor Relations Board set forth in the Intermediate Report ", . . . said secret ballot was fairly and impartially conducted and that the ballots were duly and fairly counted under the supervision of her agents and representatives of the interested parties, and that statements to this effect from the representatives of the interested parties have been filed with the undersigned, and are part of the record of the National Labor Relations Board" and Southern Steamship Company avers that on the contrary no representative of this Company signed any certificate or statement to the effect that said secret ballot was fairly or impartially conducted and that the ballots were duly and fairly counted.

4. To the finding set forth in the Intermediate Report with respect to the results of said secret ballot as follows:

"Total Number Eligible to Vote	134
Total Number of Ballots Cast	132
Total number of votes in favor of the National Maritime Union of America, affiliated with the C. I. O.	73
Total Number of Votes in favor of the International Seamens Union of America or its successor, affiliated with the A. F. of L.	4
Total Number of Votes in favor of neither of the aforementioned labor organizations	51
Total Number of Blank Votes	1
Total Number of Void Ballots	0
Total Number of Challenged Ballots	3"

5. Southern Steamship Company further objects to the ballot and to the Intermediate Report on the ground that its chosen representative was excluded by the agent of the National Labor Relations Board from the secret ballot

taken on the steamship City of Houston on October 13th, 1937, and was denied access to said vessel owned by Southern Steamship Company during the conduct of said secret ballot and was not permitted to observe the conduct of said secret ballot or to identify voters.

6. Southern Steamship Company further objects to the ballot and to the Intermediate Report on the ground that no representative of Southern Steamship Company was permitted to have access to the steamship City of Houston owned by Southern Steamship Company during the conduct of said secret ballot taken on said vessel on October 13, 1937, and no representative of Southern Steamship Company was permitted to observe the conduct of said secret ballot or to identify voters.

WHEREFORE Southern Steamship Company prays that said ballot and Intermediate Report thereon be set aside and declared null and void and that Southern Steamship Company may have such other and further relief as may be proper.

EDGAR S. MCKAIG, for
ADAMS, CHILDS, MCKAIG & LUKENS,
Attorneys for
SOUTHERN STEAMSHIP COMPANY.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss

W. B. MCKINNEY, being duly sworn according to law, deposes and says that he is President of SOUTHERN STEAMSHIP COMPANY and is duly authorized to make this affidavit on its behalf; that the facts set forth in the foregoing Objections are true and correct to the best of his knowledge, information and belief.

(Sgd) W. B. MCKINNEY

Sworn to and subscribed before me this 7th day of January, A. D. 1938.

J. E. Williams,
Notary Public
My Commission expires 3/9/39

Seal

EXHIBIT "B."

NATIONAL MARITIME UNION OF AMERICA

DECK–ENGINE–STEWARD DIVISION

Marine Bldg., 7 South St.
Philadelphia
August 18th, 1938.

Mr. T. Cherry,
Marine Superintendent,
Southern Steamship Company
Pier 46 South
Philadelphia, Pa.

Dear Sir:

The National Labor Relations Board handed the decision to the National Maritime Union that they are to represent the seamen working on all ships coming under the jurisdiction of the Southern Steamship Company.

Will you therefore please get in touch with us so that we may work out an agreement as to wages, hours, etc.

Very truly yours,

PAUL PALAZZI,
eh
Paul Palazzi, Agent Pro Tem
National Maritime Union
Port of Philadelphia

PP/eh
uopwa-#2
CIO

EXHIBIT "C."

August 23rd, 1938.

Mr. Paul Palazzi, Agent Pro Tem,
National Maritime Union, Port of Phila.
Marine Building,
7 South Street,
Philadelphia, Pa.

Dear Sir:

In response to your letter of August 18th, we beg to state that until the existing dispute, arising out of the election on our ships, is settled by the National Labor Relations Board and the Courts, the question of an agreement with your organization is premature.

Very truly yours,

SOUTHERN STEAMSHIP COMPANY,
Charles F. Sherry,
Marine Superintendent.

CFS-th

BOARD'S EXHIBIT NO. 2.

NLRB-104

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASE NO. IV-C-541.

In the Matter of

Southern Steamship Company

and

National Maritime Union of America
(Affiliated with the C. I. O.).

ORDER DESIGNATING TRIAL EXAMINER.

A charge having been filed in this matter, and it having appeared to the Regional Director of the Fourth Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that WILLIAM SEAGLE act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relati[illegible] Board.

Dated, Washington, D. C., December 2, 1938.

By direction of the Board:

George O. Pratt
George O. Pratt
Chief Trial Examiner.

(Seal)

OFFICIAL REPORT OF PROCEEDINGS BEFORE THE NATIONAL LABOR RELATIONS BOARD, FOURTH REGION.

(Filed June 15, 1940.)

CASE No. IV-C-541.

In the Matter of

Southern Steamship Company

and

National Maritime Union of America
(Affiliated with the C. I. O.)

Room 1432,
Bankers Securities Building,
Philadelphia, Penna.,
Monday, December 5, 1938.

The above-entitled matter came on for hearing, pursuant to notice, at 11 o'clock A. M.

Before WILLIAM SEAGLE, Trial Examiner.

Appearances:

JOSEPH F. CASTIELLO, ESQ. (1432 Bankers Securities Building, Philadelphia, Pa.), on behalf of the National Labor Relations Board.

ADAMS, CHILDS, MCKAIG & LUKENS, ESQS. (700 Integrity Building, Philadelphia, Pa.), Attorneys for the Respondent, Southern Steamship Company.

By RANDOLPH W. CHILDS, ESQ., and EDGAR MCKAIG, ESQ. (700 Integrity Building, Philadelphia, Pa.), of Counsel.

WILLIAM L. STANDARD, ESQ. (291 Broadway, New York, N. Y.), Attorney for the National Maritime Union of America.

By MAX LUSTIG, ESQ. (291 Broadway, New York, N. Y.), of Counsel.

Also Appearing:

PHILIP DORFMAN, ESQ., Attorney appearing for the National Maritime Union of America.

PROCEEDINGS.

TRIAL EXAMINER SEAGLE: The hearing will come to order. Off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: May I have a statement of appearances for the record, please? I am not acquainted with any of these gentlemen.

MR. CASTIELLO: For the Board, Joseph F. Castiello.

For the Respondent, Mr. Randolph W. Childs and Edgar S. McKaig.

MR. LUSTIG: For the Union, Max Lustig and Philip Dorfman.

TRIAL EXAMINER SEAGLE: Which union is it?

MR. LUSTIG: National Maritime Union.

TRIAL EXAMINER SEAGLE: Are you ready to proceed, Mr. Castiello?

MR. CASTIELLO: Yes, Mr. Examiner.

As Board's Exhibit No. 1, I herewith offer the Charge; Amended Charge; Complaint and Notice of Hearing; Rules and Regulations, Series 1, as amended; Certifications of Service of Complaint and Notice of Hearing; Motion to Extend Date of Hearing; Order Denying Motion to Extend Date of Hearing; Certification of Service of Order

Denying Motion to Extend Date of Hearing; Answer of Respondent.

These have been certified as true and correct copies of the originals on file in the Board's Regional Office by Bennet F. Schauffler, Regional Director.

May I introduce a certified copy of Order Designating Trial Examiner?

TRIAL EXAMINER SEAGLE: May I suggest that you offer the order separately?

MR. CASTIELLO: Yes.

TRIAL EXAMINER SEAGLE: Will you show the file to Counsel?

MR. CHILDS: No objection.

TRIAL EXAMINER SEAGLE: There being no objection, the file will be admitted in evidence as Board's Exhibit No. 1.

(Thereupon the document above referred to was marked as Board's Exhibit No. 1, and was received in evidence.)

MR. CASTIELLO: As Board's Exhibit No. 2, I offer order designating your Honor, William Seagle, as Trial Examiner during these proceedings.

TRIAL EXAMINER SEAGLE: Will you exhibit the order to counsel?

MR. CHILDS: No objection.

TRIAL EXAMINER SEAGLE: There being no objection, the order will be admitted in evidence as Board's Exhibit No. 2.

(Thereupon the document above referred to was marked as Board's Exhibit No. 2, and was received in evidence.)

TRIAL EXAMINER SEAGLE: I shall adjourn the hearing for a few minutes in order to give myself an opportunity to examine the pleadings.

MR. CASTIELLO: Before the recess, Mr. Examiner, as Board's Exhibit No. 3, I offer a stipulation on the business of the Company, entered into by Counsel for the Respondent and Counsel for the Board.

MR. CHILDS: No objection.

TRIAL EXAMINER SEAGLE: The stipulation will be admitted in evidence as Board's Exhibit No. 3.

(Thereupon the document above referred to was marked as Board's Exhibit No. 3, and was received in evidence.)

TRIAL EXAMINER SEAGLE: The hearing is recessed for a few minutes.

(Thereupon a short recess was taken.)

TRIAL EXAMINER SEAGLE: The hearing will come to order.

MR. CASTIELLO: Mr. Examiner, may I call attention to the fact on the record that there are certain admissions in the answer.

Paragraph 1 of the Board's Complaint, which, briefly, alleges the identity of the Company, and its features in commerce, is admitted.

Paragraph 2, which briefly alleges that the National Maritime Union of America is a labor organization within the meaning of the Act, is admitted.

Paragraph 3 of the Board's Complaint, which alleges the appropriate unit, is also admitted.

Paragraph 4 of the Board's Complaint alleges the certification of the National Maritime Union of America as the exclusive bargaining agency in that Union, which is admitted.

However, the Respondent, as part of its defense, claims that the certification is invalid.

So that your Honor may be in a position to know what happened in a previous hearing in this matter, may I introduce as Board's Exhibit No. 4 supplemental decision Order and Certification of Representatives, dated January 26th, 1938, in Case No. R-157, before the National Labor Relations Board, in the matter of American France Line, et al. (Southern Steamship Company) and International Seamen's Union of America.

This exhibit, of course, speaks for itself, but it contains the certification alleged in the complaint.

MR. CHILDS: I have seen that. I object to that, on the grounds that the certification is invalid in that, among other things, the Board did not consider many of the objections filed to the intermediate report and ballot; that the Board acted on a report which contained findings with no evidence to support them; that the Board did not permit any of the Company's representatives to attend the balloting; and that the Board erroneously held that, except with the consent of the Union, employers' representatives have no right to attend the balloting.

TRIAL EXAMINER SEAGLE: I don't think your consent to receiving a copy of the decision itself in evidence would bar you from presenting any defense along the lines you have indicated. Do you still press that objection?

MR. CHILDS: Yes, sir.

TRIAL EXAMINER SEAGLE: The objection is overruled. The copy of the decision will be admitted in evidence as Board's Exhibit No. 4. May I ask whether you have a copy of the original decision? This seems to be "supplemental decision."

MR. CASTIELLO: Mr. Examiner, the decision is termed supplemental.

TRIAL EXAMINER SEAGLE: I see it is in the matter of American France Line, et al., which was a long series of cases.

MR. CHILDS: Yes.

MR. CASTIELLO: Yes.

TRIAL EXAMINER SEAGLE: There was no other decision, then?

MR. CASTIELLO: No, there was not. There was a decision of direction of elections in this matter. However, this is the decisional certification in which we are interested.

TRIAL EXAMINER SEAGLE: I see. It may be received as Board's Exhibit No. 4.

(Thereupon the document above referred to was marked as Board's Exhibit No. 4, and was received in evidence.)

MR. CHILDS: Your Honor, may it be understood here, and so directed, that throughout these proceedings, where objections are made by any party to the proceeding, and where your Honor rules on such objections, that it shall not be necessary for the party making the objection to note an exception to an adverse ruling by your Honor?

TRIAL EXAMINER SEAGLE: That will not be necessary. When you make an objection, and it is overruled, you will be deemed to have an exception.

MR. CHILDS: All right.

TRIAL EXAMINER SEAGLE: Unless, of course, you should withdraw the objection.

MR. CHILDS: Yes, of course.

MR. CASTIELLO: In further reference to Board's Exhibit No. 4, sir, in view of the objections outlined by Mr. Childs, of the Respondent, the decision, Board's Exhibit No. 4, contains an order which dismisses the petition of the Respondent to the intermediate report filed at that time.

TRIAL EXAMINER SEAGLE: You mean exception to the intermediate report?

MR. CASTIELLO: Yes, a petition containing objections to the intermediate report.

MR. CHILDS: Our objections are a part of those.

TRIAL EXAMINER SEAGLE: I observe, in reading the stipulation on commerce, which is in evidence as Board's Exhibit No. 3, that the number of employees, which is given as 843, is pasted onto the document. Was that done with the consent of both parties?

MR. CASTIELLO: No, sir. That is a line.

TRIAL EXAMINER SEAGLE: It has a line under it.

MR. CASTIELLO: Informally, or I can say, if you care to have it informally——

TRIAL EXAMINER SEAGLE: I would like to have it on the record.

MR. CASTIELLO: There was a pencil line on that stipulation, and it is not a pasting of a number, because, at the time I submitted the stipulation to the Respondent, I called his attention to the blank in the stipulation, Board's Exhibit No. 3, and asked him to fill it in. Is that correct?

MR. CHILDS: That is correct.

TRIAL EXAMINER SEAGLE: Is that number, 843, correct?

MR. CHILDS: That statement is correct, sir.

TRIAL EXAMINER SEAGLE: And the number, 843, is correct?

MR. CHILDS: Yes, sir.

TRIAL EXAMINER SEAGLE: May I ask how it comes about that, although the election was conducted through the Regional Office of the Second Region, the hearing is being held here in the Fourth Region?

MR. CASTIELLO: Is this for the record?

TRIAL EXAMINER SEAGLE: Yes. Is there any particular reason for that?

MR. CASTIELLO: There is no particular reason.

TRIAL EXAMINER SEAGLE: The Company is located here in Philadelphia?

MR. CASTIELLO: Yes.

MR. MCKAIG: I think the answer to that was that the election was kind of a consolidated proceeding, with a great number of steamship lines, with the office of the steamship operators in New York City, so that the proceedings kind of got under way from New York, but were separately held in all the different ports.

MR. LUSTIG: The Second Region conducts all the hearings for the steamship lines, and it is my understanding they have developed a technique and a personnel conducting. That is my understanding, that it is only an administrative matter.

TRIAL EXAMINER SEAGLE: You may call your first witness.

MR. CASTIELLO: Mr. Palazzi.

PAUL FRANK PALAZZI, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Will you state your full name, please?
A. Paul Frank Palazzi.
Q. Where do you live, Mr. Palazzi?
A. 914 Spruce Street, Philadelphia.
Q. How old are you?
A. Twenty-six.

Q. What is your occupation?

A. At the time, I am unemployed as a seaman.

Q. Now, Mr. Palazzi, were you ever employed in a representative capacity by the National Maritime Union of America?

A. I was employed as a business agent of the National Maritime Union since its beginning in May, 1937.

Q. And how long did you remain there as business manager of the Union?

A. I remained in that capacity until around September, 1938.

Q. As business manager, can you outline your duties for the Examiner?

A. The National Maritime Union is a national union. The business agent is a local executive officer in that port, the office has charge of the finances, reports the income, the matter of establishing, organizing, and the upholding of the constitution in that particular port, which includes all these things.

Q. Does that term, "organizing", embrace the furtherance of organization to a point where agreement with employers may be obtained?

A. That's right.

Q. Can you outline for us the territory of the National Maritime Union?

A. The National Maritime Union, as it stands today, has representation from Maine to the Gulf ports, and up along the Mississippi river to include the New England boatmen and the Great Lakes.

Q. Did the territory covered by the Union—and, for the record, when I say "Union" I am referring to the National Maritime Union of America——

TRIAL EXAMINER SEAGLE: It will be so understood.

By MR. CASTIELLO:

Q. Did the territory of the Union, in approximately January, 1938, cover approximately the same territory?

A. It did.

Q. Does the Southern Steamship Company, the Respondent here, come within your territory?

A. It does.

Q. What class of seamen are eligible for membership in your Union?

A. All of the unemployed personnel on the ships, that is, the deck department, the stewards department, and the engine department.

TRIAL EXAMINER SEAGLE: You say "unemployed"?

THE WITNESS: I mean unlicensed personnel.

By MR. CASTIELLO:

Q. Directing your attention to approximately January of 1938, did you, in a representative capacity, learn of the certification of the N. M. U.?

A. I learned of the certification of the N. M. U. on or about the latter part of January.

MR. MCKAIG: What year?

THE WITNESS: This year, 1938.

By MR. CASTIELLO:

Q. After having learned of that certification, can you tell the Examiner what steps you took?

A. I took the steps of calling up for Mr. Sherry, who, I knew, was the company representative in this port here.

Q. You say you called him up?

A. Called him by telephone.

Q. When was the first time you called him?

A. This was on the latter part of January, or the first part of the week in February.

Q. What year?

A. 1938.

Q. Will you relate that to us, please?

TRIAL EXAMINER SEAGLE: Is Mr. Sherry located here in Philadelphia?

THE WITNESS: Yes, sir. I called. I was asked by a girl on the other end of the 'phone who I wanted to speak to.

By MR. CASTIELLO:

Q. Did you call the office of the company?

A. Yes. That is, I gave instructions to the stenographer to call up the offices of the company and ask for Mr. Sherry. When the reply to our call came, the girl asked me who I wanted to speak to. I said Mr. Sherry, and she wanted to know who I was; and, feeling sure if I told the girl I was a representative of the National Maritime Union that I might not have had the opportunity of speaking to Mr. Sherry, I told her I wanted to speak on business and there was a pause there for a moment, and then I heard the voice, "Mr. Sherry is on the 'phone now." Then I heard a voice, and I asked if this was Mr. Sherry. "Yes." And I told him we were certified by the National Labor Relations Board to act as the collective bargaining agency for the crews on his ships, and that I wanted to make arrangements for the drawing up of an agreement, to take up the other details of passes and full representation for the crew. He told me this was in the hands of his lawyer, and that's all he knew about it.

Q. When you refer to "he," who do you mean?

A. By "he" I mean Mr. Sherry.

Q. You say "we were certified by."

A. That is, "we," meaning the National Maritime Union.

Q. When you called Mr. Sherry, did you identify yourself?

A. I told him I was Paul Palazzi, business agent of the union that was certified to act as the collective bargaining agency for the crews on his ships.

Q. Was that the extent of the conversation?

A. That was the extent of the conversation with Mr. Sherry.

MR. CHILDS: I don't want to interrupt this examination, but I now move to strike out his statement that he did not believe that if he announced that he was speaking for the National Maritime Union of America that he would be allowed to talk to Mr. Sherry, on the ground that that is not a fact in issue in this proceeding. It represents the workings of his own mind.

MR. CASTIELLO: If the Examiner please, the testimony will show further 'phone calls, and perhaps it might become important, as we go on, as to why it became impossible for this man to speak to Mr. Sherry at certain times when he did identify himself.

TRIAL EXAMINER SEAGLE: The ruling will be reserved on the motion.

By MR. CASTIELLO:

Q. Did Mr. Sherry tell you, in the first 'phone conversation, that he would call you back?

A. No, he did not.

Q. Did he ever call you back?

A. He did not.

Q. When is the next time you contacted the company?

A. After this first 'phone call, I wrote a letter to Mr. Sherry; that is, I instructed the stenographer to write a letter to Mr. Sherry, a letter which I signed after it was written, the contents of which letter was——

MR. CHILDS: Just a minute. I object to the contents of the letter.

By MR. CASTIELLO:

Q. Who wrote this letter?

A. The girl, on my dictation to her, wrote the letter.

Q. Have you a copy of that letter?

A. We haven't the copy of this letter on file here, that is, we haven't it down at the office.

Q. Do you know whether or not a copy of that letter was ever made?

A. There was some question there of the carbon copy not being made at the time.

Q. Are you certain that you did write such a letter?

A. I am certain that I wrote the letter.

MR. CASTIELLO: At this time, I call upon the Respondent to produce the letter written approximately in February, 1938.

TRIAL EXAMINER SEAGLE: Do you have that letter in your file, Mr. Childs?

MR. CHILDS: I don't think I have that here. Off the record. What is the date of the record?

THE WITNESS: I can't remember the approximate date.

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion off the record.)

MR. CHILDS: We can make a search for this letter during the luncheon recess.

TRIAL EXAMINER SEAGLE: You do not have it in your files?

MR. CHILDS: We do not have it in our files.

TRIAL EXAMINER SEAGLE: You may do that.

I would also suggest to the witness that, during the luncheon recess, he, too, make a search of his own files to see whether it does not contain the letter in question.

By MR. CASTIELLO:

Q. Did you, at my suggestion, make a thorough search of your files?

A. Yes, sir.

Q. Were you able to find the copy?

A. No.

Q. Thereafter, when was the next time that you got in touch with the Respondent?

A. I waited for a reply to my letter. I waited at least two weeks, and I seen there was no reply to this letter, and I again called up Mr. Sherry.

Q. When?

A. It should be the latter part of February, the same year. The girl asked me who I was, and this time I told the girl that this was the business agent, Paul Palazzi, business agent of the National Maritime Union. She told me to wait a moment, and then the reply was that Mr. Sherry was not in at the time, and would I call back later, and I ask her to have Mr. Sherry call me back later, as soon as he came in. I received no reply from Mr. Sherry or from the office, or from the company.

TRIAL EXAMINER SEAGLE: What is Mr. Sherry's full name?

THE WITNESS: I don't recall, because we have a girl there.

TRIAL EXAMINER SEAGLE: Can you supply that information, Mr. Childs?

MR. CHILDS: Charles F. Sherry.

TRIAL EXAMINER SEAGLE: And how is "Sherry" spelled?

MR. CHILDS: S-h-e-r-r-y.

MR. CASTIELLO: May we stipulate that he is the marine superintendent of the company?

MR. CHILDS: Correct.

TRIAL EXAMINER SEAGLE: It will be so stipulated.

By MR. CASTIELLO:

Q. Did you call or contact Mr. Sherry at another time?

A. I called him later, along about the month of March, I called up again, and substantially received the same thing, that he wasn't in, and would call back later, and I asked the girl to have him call back later, after which call I did not receive a reply.

Q. At this time, did you leave your 'phone number with the operator?

A. Yes, I told her this was the National Maritime Union, and I gave her the 'phone numbers of Lombard 9194 and 91[illegible]5.

TRIAL EXAMINER SEAGLE: About when was it that you made this last call?

THE WITNESS: About the month of March.

TRIAL EXAMINER SEAGLE: Was it the early part or latter part of March?

THE WITNESS: I should say about the middle of March.

By MR. CASTIELLO:

Q. 1938.

A. 1938.

Q. Did Mr. Sherry ever return your call?

A. No, he did not.

Q. Did you thereafter contact the company again?

A. I did not contact the company again until around July of the same year, the latter part of July or the early part of August, at which time I sent him a special delivery letter.

Q. Before you go into the matter of the special delivery letter, of which you now speak, did you have occasion at any time to visit the dock at which the Respondent has its vessels in Philadelphia?

A. I went down to the dock, yes.

Q. State the time, when.

A. I can't state the time definitely, but between my last telephone conversation with Mr. Sherry and the time I sent the special delivery letter, I tried to obtain permission to enter the dock and see Mr. Sherry in his office.

Q. Did you go down to the dock?

A. I went down to the dock.

Q. And who did you see there?

A. There I saw the watchman, and the watchman evidently knew me as the business agent of the Union, and told me that I couldn't get in.

Q. How did he know you?

A. I have been on that water front for two years, I was there especially during the strike, was there nearly every day, and he has seen me there, I believe, time and time again, trying to pass out leaflets.

Q. Will you relate the conversation you had with the watchman?

MR. CHILDS: I object to that, on the ground the watchman is not authorized to speak for the Respondent.

TRIAL EXAMINER SEAGLE: The objection is overruled.

A. The general trend of the conversation was, "I want to see Mr. Sherry" and the business for which I wanted to see him.

By MR. CASTIELLO:

Q. Tell us that conversation.

TRIAL EXAMINER SEAGLE: Just tell us what the watchman said.

A. I told him that I wanted to see Mr. Sherry. He wanted to know who I was. I told him I was the business agent of the Union, that we had won an election aboard the ships of the Southern Steamship Company, and the Board had certified us as the collective bargaining agency, therefore I wanted to see Mr. Sherry to talk over the matter of this agreement, and an agreement with the company; and the watchman told me that he had no permission to allow anybody up to his office. I told him that this was a serious matter, and that if he did not let me up to his office, there may be consequences, because we were certified by the Board, and I was sure that Mr. Sherry would have to see us at one time or another.

By MR. CASTIELLO:

Q. Did you get in to see Mr. Sherry?

A. No. He told me, "those are my orders, and my job depends upon my orders."

Q. Did there come a time thereafter when you received any communication from your Union representatives at Houston concerning a matter which had occurred at the Houston port in reference to a ship of the company?

A. There was a sit-down strike on the ships of the company, on those ships that were in port at the time.

TRIAL EXAMINER SEAGLE: Which port are you speaking of?

THE WITNESS: That is the port of Houston.

By MR. CASTIELLO:

Q. That is in Texas?

A. In Texas. And I received a communication from Mr. Gurtov, who was business agent in that port.

Q. In what form was that communication?

A. The first communication was in the form of a telegram notifying us of the sit-down strike. Another communication which I received, that is, another wire, a telegram, I received, telling me the ships were released on the basis of——

MR. CHILDS: Just a moment. I object to this, and move to strike it out, on the ground it is hearsay; that he cannot establish the facts in this case by written hearsay or oral hearsay. It is fundamentally in prejudice of the substantive right of the Respondent.

TRIAL EXAMINER SEAGLE: What was the nature of these telegrams?

MR. CASTIELLO: Just a minute, please. Will you mark this Board's Exhibit No. 5 for identification?

(Thereupon the document above referred to was marked as Board's Exhibit No. 5 for identification.)

MR. CHILDS: I would like to amplify my objections, your Honor, by stating that in this case counsel have stipulated that depositions will be taken, which stipulation will be brought before your Honor in the course of the hearing, so that the testimony as to the circumstances under which this so-called sit-down strike, which we brand as disobedience to the ship's officers, was terminated, can be before the Board.

TRIAL EXAMINER SEAGLE: This telegram says nothing whatsoever as to the circumstances under which the strike took place. It merely states that one of your ships was released with a certain understanding. It says nothing at all as to what had precipitated the strike.

MR. CHILDS: But the question, your Honor, as to the basis on which the conduct of the Union was desisted from, was terminated, is something that it seems to me ought to be proved by the testimony of witnesses, and can be proved, and should not be sought to be established by written hearsay.

MR. LUSTIG: May I suggest that the telegram be admitted into evidence, if the Examiner please, to prove the receipt of such a telegram by the witness, Palazzi, without in any way reflecting upon anything contained therein, subject to connection by the testimony of Mr. Gurtov?

TRIAL EXAMINER SEAGLE: Is it planned to call Mr. Gurtov as a witness?

MR. CASTIELLO: No, Mr. Examiner, Mr. Gurtov is one of the witnesses of whom we spoke informally, who will be available by deposition in Texas.

TRIAL EXAMINER SEAGLE: I certainly cannot see any objection to receiving the telegram with the understanding that it is received subject to further connection and testimony by Mr. Gurtov, as well as by any

other witnesses who may be called by the company. It seems to me in any event it would be competent, as part of this witness's story, to indicate why he took certain action, I presume, following his telegram. I do not think the telegram is evidence of the merit of the controversy which precipitated the conduct, in any event.

MR. CHILDS: The Respondent's point is that the telegram cannot be taken as evidence on what happened at Houston, or how the conduct of the Union there was terminated.

MR. DORFMAN: It is not offered for that purpose, as I understand it.

MR. CASTIELLO: It is offered, as has been said, as evidence of the fact that a telegram was received by Mr. Palazzi.

MR. LUSTIG: This particular telegram was received by Mr. Palazzi.

TRIAL EXAMINER SEAGLE: May I ask the witness this: Did you take some action following this telegram?

THE WITNESS: In reply to this telegram there?

TRIAL EXAMINER SEAGLE: What did you do after you received this telegram?

THE WITNESS: After I received this telegram here, I sent a letter, promptly after that, I can't remember the exact date.

TRIAL EXAMINER SEAGLE: Was the reason for sending that letter the fact that you had received that telegram?

THE WITNESS: I had received that telegram, and also a telephone conversation.

TRIAL EXAMINER SEAGLE: It certainly seems to me the telegram is competent to show the connection be-

tween the witness's action. It is not being offered, as I understand it, or being received, for the purpose of showing what the motives of the Union were in calling the strike, or to show that the company was at fault in the situation.

MR. CHILDS: My thought is that, if the witness stated simply that he received a telegram from Houston, without having the telegram put in evidence, and that, on the basis of this telegram, he did certain things, I would think that was proper.

MR. CASTIELLO: Mr. Examiner, I am going to have the witness identify this at this time, and I am going to offer it, then I think it might be proper to take up any objections to it.

TRIAL EXAMINER SEAGLE: Very well.

By MR. CASTIELLO:

Q. I show you herewith Board's Exhibit No. 5 for identification, and ask you to tell us what that is.

A. This is the telegram I received from Mr. Gurtov.

Q. When is the telegram dated?

A. Dated July 19th.

Q. What year?

A. 1938.

Q. To whom is it addressed?

A. Addressed to me, Paul Palazzi, business agent, National Maritime Union.

Q. By whom is it signed?

A. Signed by R. Gurtov, who is business agent of the Union at the port of Houston.

Q. In Texas?

A. In Texas.

MR. CASTIELLO: I offer Board's Exhibit No. 5 for identification as Board's Exhibit 5.

MR. CHILDS: The Respondent objects to the admission of the telegram in evidence, on the grounds already stated.

TRIAL EXAMINER SEAGLE: I will ask you to state formally for the record your purpose in offering this telegram.

MR. CASTIELLO: My purpose in offering the telegram is not in any way as evidence of the facts contained in the telegram. Those facts will be elicited through testimony of other witnesses. The purpose of this telegram is merely to show the train of this man's story, that he did receive Board's Exhibit No. 5 for identification.

TRIAL EXAMINER SEAGLE: And as the witness has already stated, he took certain action after receiving the telegram. The objection is overruled and the telegram will be admitted in evidence as Board's Exhibit No. 5, for the purpose stated.

(Thereupon the document previously marked Board's Exhibit No. 5 for identification was received in evidence.)

By MR. CASTIELLO:

Q. You began to testify that you also received a telephone call?

A. That's right.

Q. From where did you receive the telephone call?

A. I received the telephone call from——

MR. CHILDS: That is also objected to on the same grounds, as we have now oral hearsay, distinguished from written hearsay.

TRIAL EXAMINER SEAGLE: From whom did you receive this call?

THE WITNESS: I received the telephone call from R. Gurtov, as agent.

TRIAL EXAMINER SEAGLE: The witness may testify, subject to the objection.

By MR. CASTIELLO:

Q. When did you receive this telephone call you are now about to testify to?

A. This telephone call was received before the receipt of this telegram here.

Q. Board's Exhibit No. 5?

A. Yes.

Q. And from whom did you receive it?

A. The telephone call was from R. Gurtov, business agent of the Union at the port of Houston, Texas.

Q. Go ahead.

A. And he told us that the understanding was that the company had agreed to release the ship on the basis that we would sit down and draw up an agreement covering the unlicensed personnel of this ship, that passes would be issued, and that the men involved in the strike would not be discharged.

Q. Have you finished?

A. Not yet. I wasn't there——

MR. CASTIELLO: Well, that's all.

MR. CHILDS: I move to strike out that testimony as hearsay. Any understanding sought to be arrived at between the Respondent and the Union is a matter that ought to be testified to by those who took part in that understanding.

MR. CASTIELLO: May I ask you to take it subject to connection, Mr. Examiner?

MR. CHILDS: I don't think it is a matter of connection. It is a question of proof; because, assuming that testimony is taken later as to that understanding—which, by the way, we would contend was not material—the evidence now offered, which is oral testimony, would be worthless in arriving at a finding as to what the understanding was.

TRIAL EXAMINER SEAGLE: It seems to me the testimony as to this oral conversation is not competent;

that the person who will testify as to what understanding was had between himself and some representative of the company would be the person who had that conversation, namely, Mr. Gurtov.

MR. CASTIELLO: I agree with you altogether, Mr. Examiner. However, I have this in mind: in order for you to appreciate the subsequent events here, I ask you to allow that testimony to go in, and I do not ask you to give any probative value as to the contents of that testimony itself.

TRIAL EXAMINER SEAGLE: Are you offering it at the present time merely as an introduction to some further action taken by the witness?

MR. CASTIELLO: Yes, sir.

TRIAL EXAMINER SEAGLE: It will be received for that purpose only. The facts themselves, I think, must be established by the testimony of Mr. Gurtov.

MR. LUSTIG: I think the testimony should also be taken subject to connection with Mr. Gurtov's testimony.

TRIAL EXAMINER SEAGLE: It is not only a question of connection, but also of corroboration.

MR. LUSTIG: Yes.

TRIAL EXAMINER SEAGLE: And, should Mr. Gurtov testify to the facts, it seems to me that this testimony would become of little or no importance.

MR. LUSTIG: It would be corroboration of Mr. Gurtov's testimony.

TRIAL EXAMINER SEAGLE: The testimony of value would be Mr. Gurtov's, of course.

MR. LUSTIG: Yes.

MR. CASTIELLO: Unless I misunderstood you, Mr. Childs, I think you said you did not think an agreement of such kind, if made, was material.

MR. CHILDS: Yes.

MR. CASTIELLO: Are you willing to stipulate with me that there was such an oral agreement?

MR. CHILDS: No, I am not.

By MR. CASTIELLO:

Q. After having received Board's Exhibit No. 5, and that telephone conversation, what action, if any, did you take?

A. I wrote a letter to Mr. Sherry, a special delivery letter to Mr. Sherry.

MR. CASTIELLO: Will you mark this Board's Exhibit No. 6 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 6 for identification.)

TRIAL EXAMINER SEAGLE: The witness referred to a special delivery letter some time ago. Is that the letter?

MR. CASTIELLO: Yes, that is the special delivery letter that he was speaking of.

MR. MCKAIG: It is merely a registered letter, isn't it, not a special delivery?

THE WITNESS: A registered letter, yes.

By MR. CASTIELLO:

Q. I show you Board's Exhibit No. 6 for identification. Will you tell us what it is?

A. Yes.

Q. What is it?

A. This is the registered letter I sent to Mr. Sherry.

TRIAL EXAMINER SEAGLE: Under what date?

THE WITNESS: It was in August.

By MR. CASTIELLO:

Q. Will you read the date here?

A. August 18th, 1938.

Q. By whom is it signed?

A. Signed by me, as business agent of the National Maritime Union.

MR. CASTIELLO: I will ask that this be marked Board's Exhibit No. 7 for identification.

(Thereupon the document above referred to was marked Board's Exhibit No. 7 for identification.)

By MR. CASTIELLO:

Q. Did you receive an answer to your letter of August 18th?

A. I did.

Q. I show you Board's Exhibit No. 7 for identification, and ask you whether or not that is the answer? Is that the answer?

A. This is the answer.

Q. When is it dated?

A. August 23rd, 1938.

Q. To whom is it addressed?

A. To me, Paul Palazzi, business agent pro tem, National Maritime Union, port of Philadelphia.

Q. Signed by whom?

A. Signed by Charles F. Sherry, marine superintendent, Southern Steamship Company.

Q. Is this the same Mr. Sherry with whom you had the telephone conversation?

A. It is.

MR. CASTIELLO: I offer at this time Board's Exhibit No. 6 for identification and Board's Exhibit No. 7 for identification, as Board's Exhibits 6 and 7, respectively.

TRIAL EXAMINER SEAGLE: Show them to counsel.

MR. CASTIELLO: I have shown them.

MR. CHILDS: No objection.

MR. McKAIG: May I see them?

TRIAL EXAMINER SEAGLE: The letter addressed by Paul Palazzi to Mr. T. Cherry, under date of August 18th, 1938, together with a return receipt attached thereto, will be admitted in evidence as Board's Exhibit No. 6.

(Thereupon the document previously marked Board's Exhibit No. 6 for identification was received in evidence.)

TRIAL EXAMINER SEAGLE: The letter addressed by Charles F. Sherry to Mr. Paul Palazzi, under date of August 23rd, 1938, will be admitted in evidence as Board's Exhibit No. 7.

(Thereupon the document previously marked Board's Exhibit No. 7 for identification was received in evidence.)

MR. CASTIELLO: May I state for the record that Board's Exhibits 6 and 7 are already a part of the record, a part of Board's Exhibit No. 1, since they were filed as attachments to the answer submitted by the Respondent.

TRIAL EXAMINER SEAGLE: I see.

MR. CASTIELLO: I want to show that they are identical.

By MR. CASTIELLO:

Q. Now, Mr. Palazzi, did the Respondent, either through Mr. Sherry or through anybody connected in an authoritative capacity there at any time ever contact you, as representative of the union, in order to sit down for a collective bargaining conference?

A. No.
Q. Will you speak up?
A. No.

MR. CASTIELLO: You may cross-examine.

MR. CHILDS: Your Honor, if it will not inconvenience the witness, I would suggest that cross-examination be deferred, because the point on which I wish to cross-examine the witness is this letter which he testified was mailed to the Respondent in the latter part of January, or the early part of February, 1938, and of which he can find no carbon.

TRIAL EXAMINER SEAGLE: Do you want to defer your cross-examination until you have made a search of your files?

MR. CHILDS: Yes, sir.

MR. LUSTIG: I suggest it would perhaps be better to proceed and leave the witness to be called for the purpose of cross-examination as to that.

MR. CHILDS: That is all right.

TRIAL EXAMINER SEAGLE: You reserve your right to cross-examine as to that letter?

MR. CHILDS: Yes, sir.

TRIAL EXAMINER SEAGLE: You have no other cross-examination?

MR. CHILDS: No, sir.

MR. MCKAIG: As to that letter, and also another letter he said he sent the first part of August, 1938.

MR. CASTIELLO: That is the letter in evidence.

TRIAL EXAMINER SEAGLE: That letter has been produced, hasn't it?

MR. CASTIELLO: Yes.

MR. CHILDS: I will, with your Honor's permission, cross-examine covering the point made by Mr. McKaig.

CROSS-EXAMINATION.

By MR. CHILDS:

Q. Am I correct in my understanding that your testimony is that you sent only two letters to the Respondent after January 26th, 1938, being the date when the National Labor Relations Board issued its certification?

A. As far as I can remember now, there has only been two letters I sent.

Q. And one of those letters is a letter you say was mailed in the early part of February, 1938, on which you have no carbon?

A. That's right.

Q. And the other letter is the letter of August 18th, 1938, which has been received in evidence?

A. That is right.

MR. CHILDS: Then I wish only to be given permission to recall the witness on the question of this letter which he says he wrote in the early part of February.

TRIAL EXAMINER SEAGLE: With the understanding that you will be prepared to cross-examine the witness directly after the luncheon recess, I have no objection.

MR. CHILDS: Yes.

MR. CASTIELLO: And with the understanding that you are going to make a search of your files for that letter.

MR. CHILDS: Oh, yes.

TRIAL EXAMINER SEAGLE: Mr. Childs already agreed to do that. The witness is excused.

MR. LUSTIG: May I ask a question or two?

TRIAL EXAMINER SEAGLE: I prefer you wait until Mr. Childs has finished his cross-examination.

MR. LUSTIG: Then I will be given an opportunity?

TRIAL EXAMINER SEAGLE: Yes. You also, will have a right.

MR. CHILDS: I would like to ask this question:

By MR. CHILDS:

Q. Referring to the telephone conversation which you say you had with Mr. Sherry, had you ever met Mr. Sherry?

A. No. I had seen Mr. Sherry before, but I had never met him.

Q. You are not familiar with his voice, are you?

A. I heard him talk during the seamen's strike, in '36-'37, I was outside with the pickets. I heard him talk to one of the men, I don't recall just what the subject of the conversation was, but I know I was standing up with the pickets, and he was pointed out to me as Mr. Sherry, and I heard him talk to one of the men by the sheds.

Q. You are not able to say, except from the fact that you called this telephone number, which is that of the Southern Steamship, that you recognized Mr. Sherry's voice, are you?

A. Well, I wouldn't say that I didn't, either. First of all, I asked the girl at Mr. Sherry'c office for Mr. Sherry. Then I asked "Is this Mr. Sherry?" Mr. Sherry said he was speaking over the phone.

Q. But you couldn't identify his voice, except from the fact you supposed it was Mr. Sherry because he said he was?

A. No; also because I heard him at that time, during the strike, and we had several incidents there that stood out in my mind for quite a long while, incidents surrounding Mr. Sherry during the strike, that made Mr. Sherry a conspicuous figure in my mind.

Q. I just asked you, are you able to testify, do you mean to testify, that you recognized Mr. Sherry's voice when you heard it over the phone?

A. That the voice was familiar.

Q. Could you recognize it as Mr. Sherry's voice, instead of the voice of some other employee that responded?

A. The voice was familiar, on the basis of my recollection of Mr. Sherry on that day when I was standing on the picket line.

Q. It might have been the voice of some other person, might it not?

A. It could have been the voice of anybody else.

Q. That's all I wanted to know.

A. But it was the voice that I wanted. I asked if that was Mr. Sherry, and they said "Mr. Sherry."

Q. In this conversation which you say took place, you say Mr. Sherry said the matter was in the hands of his lawyers, is that right?

A. That's right.

Q. Did you ever contact the lawyers?

A. No.

MR. CHILDS: That's all, subject to that point.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Did Mr. Sherry suggest that you contact his lawyers?

A. No. He just said "This is in the hands of my lawyers. I don't know anything about it."

Q. Did he tell you who his lawyers were?

A. No.

Q. Did his lawyers ever contact you?

A. No.

MR. CASTIELLO: That's all.

MR. LUSTIG: I would like to ask a few questions along this same line.

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: The hearing is adjourned until 1:30 P. M., and the witness is directed to return here at that time.

(Thereupon, at 12:15 o'clock P. M., the hearing was adjourned until 1:30 o'clock P. M.)

AFTER RECESS.

TRIAL EXAMINER SEAGLE: The hearing will come to order.

Before resuming the proceedings and the taking of testimony, I want to make a suggestion to counsel, which I think may be productive of saving considerable time.

It seems to me that, in view of the letter of August 23d, addressed by the Respondent to Mr. Paul Palazzi, the representative of the Union, that the company took the position that it was going to refuse to bargain with the Union on the ground that the certification made by the Board was invalid, in view of the fact, as the company claims, that the manner in which the election had been conducted was improper, for some reason.

Is that your position, in effect, Mr. Childs?

MR. CHILDS: That is corect.

TRIAL EXAMINER SEAGLE: That being the case, it seems to me that you should be able to stipulate most of the facts which relate to the charge that the company refused to bargain collectively with the Union.

MR. CHILDS: The attorney for the Board, and the attorneys for the Union have considered the suggestion, and I suggest that the Board's attorney read into the record a stipulation which I understand meets the approval of the attorneys for all parties.

TRIAL EXAMINER SEAGLE: Do you have a stipulation there?

MR. CASTIELLO: I have a stipulation, Mr. Examiner. The stipulation is as follows:

It is hereby stipulated between all parties to this proceeding that no testimony will be taken on the issue raised by Respondent's answer as to the validity of the Board's certification of January 26, 1938, as embodied in Board's Exhibit No. 4, it being agreed that the validity of this certification depends upon the validity of the Board's ruling that in the absence of consent by the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives.

Do you agree to that, Mr. Childs?

MR. CHILDS: That is agreeable to counsel for The Southern Steamship Company.

MR. CASTIELLO: Is that agreeable to counsel for the Union?

MR. LUSTIG: Off the record.

TRIAL EXAMINER SEAGLE: This is off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: On the record.

MR. LUSTIG: I don't know whether it would be wise to put in the preamble that no testimony is to be taken.

TRIAL EXAMINER SEAGLE: As I understand the stipulation, you, in effect, agree that the reason why the company refused to bargain collectively is that it took the position that the election had been improperly conducted.

MR. CHILDS: That is true.

TRIAL EXAMINER SEAGLE: And in the respect that no representative of the company was allowed to be present during the election.

MR. CASTIELLO: That is how the stipulation reads. Do you agree to it, counsel for the Union?

MR. LUSTIG: Yes.

MR. CASTIELLO: And Mr. Dorfman?

MR. DORFMAN: Yes.

MR. CASTIELLO: Counsel for the Board, of course, is agreeable to that.

TRIAL EXAMINER SEAGLE: Are you able to agree with respect to any of the other facts?

MR. LUSTIG: Will you also stipulate that has been the attitude?

TRIAL EXAMINER SEAGLE: You also, I take it, then, stipulate that the company refused to bargain with the Union because it took the position that the election had been improperly conducted, for the reason that no representative of the company was allowed to be present at the election?

MR. CHILDS: That is true, after receipt of the Union's letter of August 18, 1938, being Board's Exhibit 6, and the Respondent's letter in answer to that, to the Union, being dated August 23, 1938, and being Board's Exhibit No. 7.

TRIAL EXAMINER SEAGLE: Then, as I understand it, you are willing to concede, for the record, that at least on and after August, 1938, the company did refuse to bargain collectively.

MR. CHILDS: I am.

TRIAL EXAMINER SEAGLE: With the Union.

MR. CHILDS: Yes, sir.

TRIAL EXAMINER SEAGLE: Do you also stipulate?

MR. LUSTIG: Yes.

MR. CASTIELLO: That stipulation, of course, is agreeable to counsel for the Board.

TRIAL EXAMINER SEAGLE: I take it also, however, that you are not willing to concede that the company refused to bargain collectively with the Union before that date.

MR. CHILDS: No, we cannot make that concession, because we do not understand that is in accordance with the facts.

TRIAL EXAMINER SEAGLE: Then as to what happened before that date, it will be necessary to take testimony?

MR. CASTIELLO: That is correct.

MR. CHILDS: I would like to recall Mr. Palazzi.

PAUL FRANK PALAZZI, a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

CROSS-EXAMINATION (Continued).

MR. CHILDS: I want to state for the record, that during the intermission my partner, Edward S. McKaig, made an examination in the files in this matter in the office of the attorneys for the Southern Steamship Company, and does not find in the files any letter written by the Union to the Respondent on or after January 26, 1938, until the letter to the employer from the Union, dated August 18, 1938, and being Board's Exhibit 6.

Mr. Sherry, the Marine Superintendent of the Respondent, is also here, and is prepared to testify that he turned over his file in this matter to my firm, intact, and that no such letter was received by the Respondent.

With your permission, your Honor, I would like to ask a few questions of the witness on the stand.

TRIAL EXAMINER SEAGLE: Yes, you may.

By MR. CHILDS:

Q. What is the date on which the N. M. U. sent a letter to the Respondent relating to collective bargaining?

A. I can't tell you exactly what the date is. I can just give you an idea of the time. It was the early part of February and the latter part of January, and it was on a Saturday afternoon; it was in that time.

Q. Do you know the date when the National Labor Relations Board made its order of certification in this case?

A. I don't know the exact date, but it was the latter part of January.

Q. If I tell you that the certification was made on January 26, 1938, was the letter to which you refer written after that time?

A. It was written after that time.

Q. To whom was the letter dictated?

A. I recalled during the intermission that the letter was written in the afternoon. In the afternoon, we haven't a stenographer here, so I banged out the letter myself, which I sent to Mr. Sherry.

Q. When you banged out the letter yourself, did you keep a carbon copy?

A. No. I have trouble enough typewriting a letter, let alone the fact I have to keep carbon copies of the letters. I am not proficient in that respect.

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: This is on the record.

By MR. CHILDS:

Q. You wrote this letter in your office?

A. Yes.

Q. Were paper and carbon available there?

A. Yes, there was paper and carbon, but all this stuff is usually in the stenographer's desk; I have a supply in my own office of letterhead paper, but no carbon, or anything of that sort.

Q. You could have gotten carbon from the stenographer's desk, could you?

A. I could have gotten carbon if I had asked her in the morning, I suppose. I suppose there must have been carbon lying around the desk, even though she does lock up most of the stuff when she goes. I imagine there must have been carbon paper and carbon copy around there.

Q. Did you go to her desk to endeavor to get carbon paper?

A. No, I didn't think of it. I just put the letter in the machine, and typed it out.

TRIAL EXAMINER SEAGLE: You mean the letterhead, don't you?

THE WITNESS: The letterhead, yes.

By MR. CHILDS:

Q. How long had that stenographer been employed by the Union?

A. She had been employed since about the middle of 1937.

Q. Was she employed after this time?

A. Yes.

Q. What is here name?

A. Esther Hoptner.

Q. Is she still employed by the Union?

A. She is.

Q. Is she down at your office now?

A. She should be. I don't know.

Q. You testified this morning, didn't you, that you dictated the letter in question to this stenographer?

A. I said that this morning, but I recalled during the intermission, I was going over this case to myself trying to define the exact date, and I remembered it was sent on a Saturday afternoon.

Q. Had you frequently before that written letters on Saturday afternoon, after the stenographer had left?

A. This is the routine in the office: We used to have pay day on Saturday morning, and I used to put out all the communications that we received Friday morning, I used to answer those letters while she was there, then, in the afternoon, when it is usually slow, we hold meetings, all of the officials of the Union hold meetings. That is one of the things we were discussing, and it was at that time I went in and wrote off the letter.

Q. Was the letter registered?

A. No, it was just ordinary postage.

Q. Where did you get the stamp?

A. I got the stamp in my own desk.

Q. Where was the letter posted?

A. We have a mail box right at the foot of South Street.

Q. And who posted this letter?

A. I did.

Q. To whom was the letter addressed?

A. The letter was addressed to Mr. Sherry, I have forgotten just what the initial was, but to Mr. Sherry. We have a directory there, and I copied the address, it was 3040 or 3042, I don't recall just exactly.

Q. What did you say this letter contained?

A. I said in this letter, with reference to my telephone conversation with him of the other day, I said since we were certified by the National Labor Relations Board to represent the unlicensed personnel as the sole collective bargaining agency, I therefore wanted to make some appointment with him to discuss the question of drawing up an agreement, and the issuance of passes. These were the main things in the letter, that I remember.

Q. Did you inclose any agreement that you wanted signed?

A. No.

Q. Did you ever write another letter to the Respondent until August 18, 1938?

A. I don't recall any.

Q. What is it that makes you believe this letter was written after January 26, 1938?

A. After my telephone conversation, as I said, it was brief, and Mr. Sherry just said, "Anything about this case I leave in the hands of the lawyers." I thought I would have a better chance of explaining, and making Mr. Sherry realize the importance of our getting together, and that we draw up an agreement, since we are certified by the National Labor Relations Board.

Q. Did you ask Mr. Sherry what the names of his lawyers were?

A. No, I did not.

Q. And you did not send the letter by registered mail?

A. I sent it through ordinary mail.

Q. And when you did not get a reply from it, you did not follow it up with another letter until August 18, 1938?

A. I called up when I didn't get a reply.

Q. When you called up, you got no reply then, did you?

A. No.

Q. Nevertheless, you did not make any further demand for collective bargaining until August, 1938?

A. The matter was then left in the hands of our attorney.

Q. Do you know whether your attorney made any demand or not?

A. I don't know.

Q. Who was your attorney?

A. Mr. Dorfman.

MR. CHILDS: That is all.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. You never did receive a reply to this letter of February that you are speaking of?

A. No, I have not.

MR. CASTIELLO: That is all.

MR. CHILDS: That is all.

TRIAL EXAMINER SEAGLE: The witness is excused.

(Witness excused.)

MR. CHILDS: Your Honor, I am prepared to put on the stand Mr. Sherry, and propose to prove by this witness that he never received the letter referred to by the witness, and my partner, Mr. McKaig, is also prepared to take the stand and testify that the file does not contain the letter.

As a matter of convenient order of proof, I suggest that the testimony to which I last referred be deferred until the defendant puts on its case.

TRIAL EXAMINER SEAGLE: I was about to ask whether Mr. Castiello was through with the presentation of his case.

You have other witnesses?

MR. CASTIELLO: Oh, yes, your Honor.

TRIAL EXAMINER SEAGLE: I so assumed. You would naturally be expected to wait until the Board had finished the presentation of its case.

MR. CHILDS: I therefore reserve making a motion to strike out all testimony about the lost letter.

TRIAL EXAMINER SEAGLE: You may reserve the right to make the motion.

MR. CASTIELLO: Mr. Tracey, will you take the stand.

JOHN JOSEPH TRACEY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Will you state your full name?

A. John Joseph Tracey.

TRIAL EXAMINER SEAGLE: Will you spell your last name, please?

THE WITNESS: T-r-a-c-e-y.

By MR. CASTIELLO:

Q. You are the same John J. Tracey named in the complaint, are you not?

A. Yes.

Q. How old are you, Mr. Tracey?

A. 33.

Q. Where do you live?

A. 2538 Cedar Street.

Q. Are you married?

A. Single.

Q. Have you ever been employed by the Southern Steamship Company?

A. Yes, sir.

Q. When was the first time that you were employed?

A. 1929.

Q. In what capacity?

A. Engine division.

Q. And what did you do in the engine division?

A. Fireman and oiler.

Q. How long did you work for the company at this time?

A. For about a period of three months, I should say, I don't know just exactly.

Q. Did you quit, or were you discharged at that time?

A. I quit.

Q. Did there come a time when you sought employment from the company again?

A. Yes, sir.

Q. When was that?

A. It was in 1930.

Q. And were you employed?

A. I was employed.

Q. In what capacity?

A. In the engine department.

Q. Doing what?

A. I was fireman and oiler.

Q. And how long did that job last?

A. I was on there about three months during the summer.

Q. Did you quit that?

A. Yes, sir.

TRIAL EXAMINER SEAGLE: What part of the year was it?

THE WITNESS: Summer.

TRIAL EXAMINER SEAGLE: Summer?

THE WITNESS: Summer of 1930.

By MR. CASTIELLO:

Q. Did you quit that time?

A. Yes, sir.

Q. Were you again employed by the company?

A. Yes, sir.

Q. When?

A. In 1931.

Q. In what capacity?

A. The engine division.

Q. What were your duties there?

A. I was a wiper.

Q. A wiper?

A. Yes.

Q. How long did that employment last?

A. That was during a period of about three months, too, summer months.

Q. Summer months?

A. Yes; 1931.

TRIAL EXAMINER SEAGLE: Again during the summer?

THE WITNESS: Yes, sir.

By MR. CASTIELLO:

Q. Did you quit or were you discharged?

A. I quit.

Q. Did there come a time when you were again employed by the company?

A. Yes, sir.

Q. When?

A. In 1937, about March 10, 1937.

Q. In what capacity?

A. In the engine division.

Q. What were your duties there?

A. I was a wiper, fireman and oiler.

Q. And how long did this employment last?

A. It lasted for sixteen months.

Q. Until approximately what time?

A. The 25th of July, 1938.

Q. Did you resign or were you fired?

A. I was fired.

MR. CHILDS: What date did he say?

MR. CASTIELLO: July 25, 1938.

By MR. CASTIELLO:

Q. In your sixteen months of employment, were you a fireman continuously?

A. No, sir.

Q. What were your first duties?

A. I went on as a wiper.

Q. How long did you act as a wiper?

A. Eight days, about eight days, and then I went firing.

Q. Then you went firing?

A. Yes.

Q. You mean you acted as fireman?

A. Yes, as fireman.

Q. How long did your duties as fireman last?

A. I guess it was about six months.

Q. And then what duties did you take on?

A. I went oiling.

Q. You went oiling?

A. Yes, sir.

Q. Were these three employments, wiper, fireman and oiler, all in the engine division?

A. Yes, sir.

Q. What was your salary per month at the time you say you were discharged?

A. Eighty-five dollars a month and keep.

Q. And keep?

A. Yes.

Q. In addition to that?

A. Yes, sir.

Q. How many years have you been going to sea altogether?

A. I started in 1929.

TRIAL EXAMINER SEAGLE: Was the job with the Southern Steamship Company your first job?

THE WITNESS: Yes, sir.

By MR. CASTIELLO:

Q. That is, in the meantime, have you worked for any other steamship company?

A. Yes, I have, off and on.

Q. Are you a member of the National Maritime Union?

A. Yes, sir.

Q. When did you join?

A. I joined in July, 1937.

Q. '37?

A. 1937.

Q. Before your joining the N. M. U., were you a member of any other Union?

A. No, sir.

Q. Did you hold any office in the Union?

A. No, not any office. I held office on the ship.

Q. You held office on the ship?

A. I was a delegate on the ship.

Q. You were a delegate on the ship?

A. Yes, sir.

Q. Were you appointed or elected to this office?

A. I was elected.

Q. And what department, if any, did you represent as a delegate?

A. I represented the engine division as a delegate.

Q. How many persons were in the engine division whom you could represent as a delegate?

A. Eight.

Q. Eight persons?

A. Yes, sir.

Q. Did you at any time solicit any of your fellow members of the crew to become members in the Union?

A. Yes, sir; I did.

Q. How many, approximately, did you solicit?

A. Well, I got quite a few of them. I got nine at the time we had the trouble. I got quite a few in the Union before that, but they didn't stay with the ship, some would go off and others would come on.

Q. You mean, you are telling us you had nine men signed up at your solicitation?

A. In one group; yes, sir.

Q. In one group?

A. Yes, sir.

Q. In your last employment that started March 10, 1937, and terminated on July 25, 1938, on what ship were you employed?

A. The S. S. "City of Fort Worth."

Q. Were you employed on that continuously?

A. Yes, sir.

Q. How many members of the crew of the S. S. "City of Fort Worth" constituted the unlicensed personnel?

A. Nineteen.

Q. Nineteen?

A. About nineteen.

Q. And how many of those nineteen belonged to your union?

A. Well, thirteen belonged to it, including myself.

Q. Were there any other delegates of the union?

A. Yes.

Q. Aboard ship?

A. Yes, there was a deck delegate and a steward delegate.

Q. Who was the deck delegate?

A. Joseph Warren.

Q. And who was the steward delegate?

A. Edward Smith.

Q. Were you men appointed or elected?

A. Elected.

Q. By whom?

A. By the membership.

Q. When you speak of the membership, whom do you mean?

A. I mean the unlicensed personnel of the ship.

Q. You mean that the men from each particular division elected each particular delegate?

A. Yes, sir.

Q. What were your duties as a delegate of the engine department?

A. Well, anything that would go wrong, or anybody that had any trouble with the officers or anything, they would come to me, in my particular department, and I would go to the engineer.

Q. Did you ever have occasion to go to the engineer?

A. No, sir. Of course, they wouldn't recognize us.

Q. What makes you state they wouldn't recognize you?

A. Well, if they didn't recognize the union, they wouldn't recognize us as delegates.

Q. Directing your attention to July 18, 1938, where was the ship docked at that time, the "City of Fort Worth"?

A. It was at Houston, Texas.

Q. Was it actually docked?

A. Yes, sir.

Q. And moored to the dock?

A. Tied up to the dock.

Q. At that time did there occur any action on the part of the union?

A. At the time it was tied up?

Q. Yes.

A. Yes, sir. We had a strike.

Q. You had a strike?

A. Yes, sir.

Q. Do you remember when the strike took place?

A. It was on a Monday, around the 18th, I think.

Q. Of July?

A. Of July.

Q. Can you tell us whether or not there was a meeting of the members of the crew who belonged to the union before the strike took place?

A. There was.

Q. There was such a meeting?

A. Yes, sir.

Q. And where did that meeting take place?

A. In the union hall.

Q. Where?

A. In Houston.

Q. When did it take place?

A. It took place on a Sunday.

Q. It took place on the 17th, on a Sunday?

A. On a Sunday.

Q. How many members of the union who belonged to the crew of the "City of Fort Worth" were present?

A. There were thirteen.

Q. What was discussed at that meeting?

A. Well, it was discussed that action would be taken the following day, we went on a strike, and we were striking for passes for our delegates and recognition of our union.

Q. Were any shore delegates of the union present?

A. Yes, sir.

Q. Who were they?

A. Gurtov, Jarvis and Cunningham.

TRIAL EXAMINER SEAGLE: Were they union officials?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: What were their positions?

THE WITNESS: Gurtov was agent, and Jarvis and Cunningham were delegates.

By MR. CASTIELLO:

Q. When you say "delegates" do you mean shore delegates?

A. Shore delegates.

Q. You say that you decided to strike for union recognition?

A. Yes, sir.

Q. What do you mean by union recognition? What did you understand by that at the time?

A. Well, we understood that we won our election, and the N. M. U. was supposed to be collective bargaining with the company, and they were not doing anything about it, so we decided that we were going to push it, force them.

Q. When you say they were not doing anything about it, to whom do you refer?

A. To the company.

Q. How do you know they were not doing anything about it?

A. We got in contact with our shore delegates every time we came in, we would ask them about it, they said, "We can't get nothing from them," they wouldn't listen to them.

Q. So you then decided to have a strike?

A. To force it.

Q. To force whom?

A. The company.

Q. Can you tell us whether or not the members of the union present at this meeting on July 17, 1938, discussed the manner in which the strike was to be carried on?

A. Yes, sir, they did.

Q. First of all, tell us, when was the strike to take place?

A. It was supposed to take place on Monday morning, July 18, at 8 o'clock.

Q. That was the following day?

A. The following day.

Q. And how was the strike to be conducted?

A. It was to be conducted very orderly, no violence whatsoever, just tell them what we want, and if we didn't get it, we were going to sit down. We were going to keep steam in all of our auxiliaries, and if they put steam on the deck, we were going to shut down on them, we were not going to give them no steam.

Q. In order that we may understand what you mean by that you were going to give them steam for the auxiliaries, can you explain to us what the auxiliaries are?

A. Yes, sir. The fire alarms, the ice machine, the sanitary pumps and the line.

Q. What was your purpose in deciding to keep the steam up for these auxiliaries?

A. We wanted to keep the ship in a safe condition at all times.

Q. And you decided not to give steam on the deck, you say?

A. To the winches, for hoisting cargo.

Q. Is that w-i-n-c-h-e-s?

A. Yes.

Q. What was your purpose in deciding not to give steam to the winches to lift the cargo?

A. If we didn't give no steam to the winches, the ship couldn't sail, and if they couldn't load cargo, they couldn't be able to sail.

Q. Can you tell us whether or not that was agreed to by the members present at the meeting?

A. Yes, sir.

Q. That this was the policy to follow the next day?

A. Yes, sir.

Q. Did everybody agree to it?

A. Yes, sir.

Q. All right. Can you tell us whether or not on July 18, 1938, the strike took place as you had planned it?

A. Yes, sir, it took place.

Q. What time did it start?

A. Eight o'clock.

Q. At this time were you an oiler on the ship?

A. Yes, sir.

Q. And did you have a particular watch on board the "City of Fort Worth"?

A. Yes, sir. I had the 4:00-8:00 watch.

Q. Is that 4 a. m. to 8 a. m. watch?

A. Yes, sir.

Q. What were you supposed to do during that watch?

A. I was supposed to oil all the winches, and grease them, and supposed to put the steam on the deck.

Q. What was the purpose in oiling the winches and greasing them?

A. To keep them so they would run, so that they wouldn't run hard, and burn out their bearings.

Q. Were you preparing the ship for loading?

A. No, sir.

Q. Who does the loading of the ship?

A. The stevedores.

Q. Do the unlicensed crew help in the actual loading of the ship?

A. No, sir, they don't touch it.

Q. You say those were supposed to be your duties. Can you tell us whether or not on your watch, from 4 a. m. to 8 a. m., you carried out those duties?

A. Yes, sir, I did carry them out, as far as until it came to putting steam on deck, and I refused to do that.

Q. Can you tell us what was the next happening, in order of time, as far as you are able to testify, in this strike?

A. Well, about 7:30, I guess, or twenty minutes of eight, I was down in the engine room.

Q. Was that in the morning?

A. That was in the morning; and the first assistant came down.

Q. What is his name?

A. His name is Pool, Mr. Pool.

Q. Is he the first assistant engineer?

A. Yes, sir.

Q. Go ahead.

A. He came down and said, "Tracey, what's the matter, you ain't got steam on deck?" I told him I wasn't going to put any on deck. Then I told him what we wanted.

Q. What did you tell him?

A. I told him we wanted passes for our delegates and recognition of our union. And he told me I couldn't do that. Well, I says I could. He said he would have to put the steam on deck himself. I says, "Well, if you do, I will have to take the firemen out of the fire room."

Q. Who was present besides Mr. Pool, the first assistant, and yourself, at this conversation that you have now related?

A. At this particular time we were the only two persons there.

Q. And who were the firemen that you speak of, that you would have to take off?

A. Why, Brown.

Q. Can you spell it?

A. B-r-o-w-n.

TRIAL EXAMINER SEAGLE: Is that B-r-o-w-n or B-r-a-u-n?

THE WITNESS: Brown.

MR. DORFMAN: B-r-a-u-n, Alex Braun.

By MR. CASTIELLO:

Q. You say Mr. Braun was a fireman?

A. Yes.

Q. What was he doing?

A. He was in the firing room, waiting for me to come out and tell him what to do.

Q. Was he also a member of your union?

A. Yes, sir.

Q. Had he been at the meeting the Sunday before?

A. Yes, sir.

Q. Did you ask Mr. Braun to leave?

A. Ask him to leave the fire room?

Q. Yes.

A. Not until after the first assistant had put the steam on deck.

Q. Did Mr. Pool come down and put the steam on deck himself?

A. Yes, sir.

Q. Well, what did you do then?

A. I told Braun to put his fires out, and he threw his pumps, and came out.

Q. Then relate to us what you did.

A. Well, he walked out of the fire room about the time that his relief was coming down.

Q. Who was his relief?

A. Elmer Ferguson.

Q. Is he also a member of the union?

A. Yes, sir.

Q. Was he also at the meeting the Sunday before?

A. He was, yes, sir.

Q. What happened then?

A. So he took and relieved Braun, and Braun went up.

Q. What was Braun's watch period?

A. He was on the 4:00-8:00, the same as I was.

Q. What was Mr. Ferguson's watch?

A. 8 a. m. to 12.

Q. Go ahead.

A. So the steam kept going down, and Ferguson wouldn't go up and fire it, he just stayed there and watched it go down, so the second assistant came down.

Q. What is his name?

A. His name is Robertson.

Q. Yes?

A. So the second assistant came down, he says, "All right, Elmer, go ahead up. I am taking it over."

Q. Who is Elmer?

A. Ferguson.

Q. Is his full name Elmer Ferguson?

A. Elmer Ferguson.

Q. All right; continue.

A. So he started out of the fire room, and I says, "Second, are you going to light those fires?"

He says, "Yes."

I said, "That's all I want to know," and I walked up.

Q. Are you referring to the second assistant when you say "second"?

A. Yes, sir.

Q. He is the second assistant engineer?

A. Yes, sir.

Q. Then, you say, you went up. Where did you go?

A. I went up and sat down on the poop, all the way back to the poop deck and sat down, and I told the fellows what happened down there, and I just sat there.

Q. When you say you told the fellows, to whom do you refer?

A. I refer to the rest of the union men that was waiting for me to say what they was going to do.

Q. Was the strike started in your department, in the engine room?

A. Yes, sir.

Q. And was the crew, the other members of the union, waiting for your answer?

A. Yes, sir.

Q. And you came up and told them?

A. I came up and told them.

Q. And then where did you go?

A. We sat down on the poop.

Q. In relation to the ship, what is the poop deck?

A. It is on the stern end of it.

Q. Is that the high deck?

A. The highest deck, the highest part, the stern of the ship.

Q. While you were sitting on the poop, could you see the dock from where you were?

A. Yes, sir.

Q. And were all the members of the union sitting there?

A. Yes, sir.

Q. Approximately how many?

A. Thirteen of us.

Q. Can you name those thirteen?

TRIAL EXAMINER SEAGLE: You say those men were sitting on the dock?

THE WITNESS: No, on the deck.

TRIAL EXAMINER SEAGLE: On the deck?

MR. CASTIELLO: Yes.

THE WITNESS: Yes, sir.

By MR. CASTIELLO:

Q. Can you name those thirteen men?

A. Well, there was Smith, Hughes, Reese, Pfuhl, Lathan, Warren, Ferguson, Tracey.

TRIAL EXAMINER SEAGLE: You have only named eight so far.

THE WITNESS: Burns.

MR. CHILDS: Show it to him, if you want.

By MR. CASTIELLO:

Q. Was Mr. Reese there?

A. Yes, sir.

Q. Was Mr. Hall there?

A. Yes.

Q. Mr. Hughes?

A. Mr. Hughes.

Q. Mr. Neeley?

A. Mr. Neeley.

Q. And Mr. Crassovaz?

A. Yes, and Braun.

MR. CHILDS: He has fourteen now, hasn't he?

MR. LUSTIG: He has Hughes there twice.

By MR. CASTIELLO:

Q. You testified you were able to see the dock from where you were sitting?

A. Yes, sir.

Q. And so were the other strikers able to see the dock, were they not?

A. Yes, sir.

Q. How far was the dock from where you were sitting on the poop deck?

A. Right up against it, the boat was tied right up against the dock.

Q. Did you see any of the other delegates on the dock?

A. Yes.

Q. Whom did you see on the dock?

A. Jarvis and Cunningham.

Q. And these are the Houston union men?

A. Yes, sir.

Q. And how far were they from the poop deck?

A. They were right underneath, so we could talk to them.

Q. And you were able to see them, of course?

A. Yes, sir.

Q. How long did you stay on the poop deck?

A. Until about 7:30 that night.

Q. Until 7:30 p. m., that night?

A. Yes, sir.

Q. I want you to relate certain incidents that took place during your stay on the poop deck. Can you tell the Examiner whether or not any of the officers, and which ones, approached you people to speak to you while you were on the poop deck?

A. Well, the captain, the chief engineer, the first assistant engineer and the first mate, and the company representative.

Q. Can you tell us what the captain's name is?

A. Why, Captain Rudan.

Q. Can you tell us who the company's agent was?

MR. CHILDS: Schreider, S-c-h-r-e-i-d-e-r.

THE WITNESS: Schreider, I think that was Schreider.

By MR. CASTIELLO:

Q. Do you know it to be Mr. Schreider?

A. I know it to be Mr. Schreider.

Q. Who was the first mate?

A. Helland, I think his name is.

Q. H-e-l-l-a-n-d?

A. I think it is.

Q. In order, as nearly as you can recall, which of these men first came up to speak to the striking group?

TRIAL EXAMINER SEAGLE: You haven't yet told us who the chief engineer was.

THE WITNESS: The chief engineer was Norton.

TRIAL EXAMINER SEAGLE: Who was the assistant?

THE WITNESS: Mr. Pool was the first assistant

By MR. CASTIELLO:

Q. Who first approached you, of these men whose names you have now stated for the record?

A. Well, I believe the captain and the chief engineer came back together, if I am not mistaken.

Q. How long after you first started to sit there did they come over?

A. They came on back around 8 o'clock.

Q. And did either one of these gentlemen, either the captain or the first mate, have anything to say?

A. They told us we were foolish, we should go back to work and take the ship back to Philadelphia, and settle everything in Philadelphia, and they brought a deputy commissioner aboard.

Q. Who do you mean by deputy commissioner?

A. He is supposed to be a deputy commissioner of Houston, a deputy shipping commissioner.

Q. After the captain made that statement to you men, was there any reply made by any of you men?

A. No, we just sat there.

Q. Did anyone speak in answer to what the captain said?

A. Joe Warren was our spokesman, but he didn't have anything to say in regard to that.

Q. Go ahead.

A. They brought a deputy commissioner aboard, and he told us he was going to take our papers away from us if we didn't go back to work.

Q. What papers was he referring to?

A. Identification papers, and license to work on the ship.

MR. LUSTIG: Certificates?

THE WITNESS: Certificates, he was going to take them away from us if we didn't go back to work.

By MR. CASTIELLO:

Q. What was your reply, if any?

A. We told him we couldn't do it.

Q. Who spoke for the crew?

A. Joseph Warren.

TRIAL EXAMINER SEAGLE: What was the name of the deputy commissioner?

THE WITNESS: I couldn't say.

By MR. CASTIELLO:

Q. Mr. Tracey, did any one of the other officers have anything to say to you men?

A. Yes, they all had something to say, but I don't just recall what was said. Of course, we refused to talk to them, we told them to go down on the dock and talk to our delegates, our shore delegates.

Q. And what did they have to say?

A. They said if they went down and talked to our delegates, they would have to recognize the delegates from all unions. We told them they wouldn't have to recognize anybody but us.

Q. When you use "they" to whom are you referring?

A. The company agent, mostly. He was the one that was doing all the talking.

Q. Did the company's agent do most of the talking?

A. Yes, sir.

Q. Did anyone else come up to speak to you? When I say "you" I mean the crew there?

A. Anyone else from the office?

Q. Yes.

A. No, sir.

Q. Was there anything said by any of the officers about your agreement, your articles of agreement?

A. Yes, sir, they told us we were breaking our contract.

Q. Who told you this?

A. The company's agent told us we were signed to bring the ship back, and we were breaking our contract by not sailing the ship back.

Q. Was there any reply made by the union?

A. No, sir, we ignored it.

Q. Did Mr. Warren have anything to say?

A. Not then, no, I don't think.

Q. Were you signed under articles of agreement when you boarded the ship?

A. As far as I know, we signed articles of bringing the ship to Houston and back.

Q. What was that?

A. I say, as far as I know, we signed articles to bring the ship to Houston and back.

Q. And they are the articles that we are speaking of here, are they not?

A. Yes, sir.

Q. They are the same articles that the company said you were breaching?

A. Were breaking.

Q. Can you tell us what kind of articles they were?

A. To tell you the truth, I don't know. I never read it.

Q. Do you know whether or not they were coastwise articles, or foreign?

A. Well, they were coastwise articles, yes, sir.

Q. They were coastwise articles?

A. Yes, sir.

Q. Do you know the difference between coastwise articles and foreign articles?

A. Yes. There is a difference there. I don't know exactly what the difference is.

Q. How many times during the day did the local agent come up and speak to you strikers?

A. About four or five.

Q. Did he come up at different intervals during the day?

A. Yes, sir. He told us we would have to get off, a couple of times, and he was getting another crew down there, we would have to leave the ship.

Q. Yes?

A. But nothing happened about it. We just ignored it, that's all.

Q. Did the local agent set any particular time when you were to leave the ship?

A. Yes, sir. Several times, about four times, anyhow, he came back and told us he would give us half an hour to get off.

Q. Yes?

A. In maybe an hour or so, he would be back again, and give us another half hour.

Q. When he would come back, what would he say to you?

A. He would ask us if we still intended to sit down, we would tell him yes, so he would say, "All right, you will have to get off the ship. We are going to get a new crew."

Q. Was the ship injured at any time while you were on strike?

A. No, sir.

Q. I believe you testified that steam for the auxiliaries and for the winches was put in by one of the assistant engineers?

A. Yes, sir.

Q. Was the ship being loaded while you were striking?

A. Yes, sir.

Q. By whom?

A. By the stevedores.

Q. When was the sailing date of that ship?

A. It was due to sail July 18th.

Q. Was that the same day?

A. That was the same day.

Q. Did it have any particular hour at which it was to sail?

A. No, sir.

Q. In your experience, can you tell us whether or not the sailing hour on the sailing date varied at all?

A. Yes, sir.

Q. And what would cause it to vary?

A. The cargo. The more cargo they had, the longer it would take them to put it in.

Q. Now, did there come a time when this strike was ended?

A. Yes, sir.

Q. Can you tell us the events leading up to that?

A. The strike was ended about 7:30 that night.

Q. How was it ended? Tell us what happened.

A. Well, when they couldn't get no crew for to bring it back, the company agent and the captain went over to our delegates.

Q. Were the delegates still on the dock?

A. Yes, sir.

Q. Still in view of you?

A. Yes, sir.

Q. Did you see the company agent and the captain go over to them?

A. Yes, sir.

Q. How long did they stay in that group together?

A. Well, maybe about ten or fifteen minutes.

Q. Then what occurred? Now, excuse me. Were any of the members of the crew who were sitting on the poop deck in this conference?

A. Yes, there was one.

Q. Who was he?

A. Joseph Warren.

Q. How did he happen to leave the ship?

A. He got permission off the captain and the company agent to go on the dock and talk to our delegates, he got permission, if he wanted to go out, he would be allowed to come back again.

Q. Was Joe Warren present in this group that included the local agent and the shore delegates?

A. Yes, sir.

Q. Who were the shore delegates at this conference?

A. There was Jarvis and Cunningham.

Q. Mr. Warren was there?

A. Yes, sir.

Q. And Mr. Schreider, the local agent, was there?

A. Yes, sir.

Q. And Captain Rudan?

A. Yes, sir.

Q. Was there anyone else?

A. There was quite a group there out on the dock, I don't know just who else was in on this.

Q. I mean in this group.

A. No, that's all that was there, them four.

Q. Only those four or five?

A. Yes, sir.

TRIAL EXAMINER SEAGLE: You mean you could see these men while they were conferring?

THE WITNESS: Yes, sir.

By MR. CASTIELLO:

Q. Did there come a time when the other members of the crew left the ship?

A. Yes, sir, there was.

Q. Tell us about that.

A. Well, after the company agent and the captain was talking to our delegates, they walked away, and the delegate waved for us to come off the ship.

Q. Yes?

A. So we all went off, and went down on the dock, and he told us that everything was all right.

Q. Did all the strikers who were members of the crew go off the ship?

A. Yes, sir.

Q. And down on to the dock?

A. Yes, sir.

Q. Did you go off in the presence of the master?

A. Yes, sir.

Q. And the local agent?

A. Yes, sir. They were on the dock.

Q. Try to visualize this for us, please. When you came off the ship, where were the local agent, the captain and the two delegates?

A. They were standing over towards a shed, I would say about twenty or twenty-five feet away from our delegates, our union delegates.

Q. How far were your union delegates from the edge of the dock where the ship was moored?

A. I guess they were about two hundred or three hundred feet back.

Q. Then all you people came down off the ship, did you not?

A. Yes, sir, and we walked out to the dock, toward the delegates.

Q. Toward the delegates?

A. Yes.

Q. Did there come a time when the delegates spoke to you?

A. Yes, sir.

Q. How long after the conference of the delegates, the agent and the master had ended did the delegates come over and speak to the striking members of the crew who were now on the dock?

A. Right away. As soon as they walked away, they waved for us to come on.

Q. And who of the delegates spoke to you?

A. It was Jarvis done the talking.

Q. He spoke to the other striking members of the crew?

A. Yes, sir.

Q. Tell, as near as you remember, what Mr. Jarvis said.

MR. CHILDS: I have not interrupted, but at this time I want to object to any testimony about what Mr. Jarvis told this witness, if it relates to facts that are deemed important from the Board's standpoint, and which are not within the knowledge of this witness.

MR. CASTIELLO: The prospective testimony is on an alleged oral agreement which took place. It is the Board's position that this witness is competent to testify to that, for two reasons.

First, I think my friend's objection is that it is hearsay.

MR. CHILDS: Yes, that is right.

MR. CASTIELLO: In the event it is hearsay, he is competent to testify on the ground that in these proceedings the rules of evidence are not strictly adhered to.

Secondly, under the strictest interpretations, in my humble opinion, of the rules of evidence, the conversation and the statements of Mr. Jarvis, which he is now going to relate, are a part of the res gestæ; that being so, sir, that is an exception to the hearsay rule. You see the set-up there. There are two groups, and immediately after having finished a conference with a

representative of the company, the shore delegate comes over to this other striking group who are now on the dock. That is so material a part of it, that I think, for all purposes, it is not hearsay.

TRIAL EXAMINER SEAGLE: Let me ask this question: Do I understand that you were able, from where you stood, to see the men who were engaged in the conference?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: You were not, however, close enough to hear what they said?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: About how far away were you?

THE WITNESS: I would say about three hundred feet.

TRIAL EXAMINER SEAGLE: You were on the ship, and they were on the dock?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Did you see them walk towards the ship after they had finished their conference?

THE WITNESS: They didn't walk towards the ship. The pier ends right there at the street where it was tied up, that is, 75th Street, there is an office there on the corner, and the agent and the captain walked over toward the office after they left our delegates. Naturally, we were watching for them to go and contact our delegates all day, and they wouldn't go over to talk to them, we had to sit down, and stay there.

As soon as they went over and talked to them, we knowed that things was going to happen.

TRIAL EXAMINER SEAGLE: Did you leave the ship to go to the dock, to the delegates?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Or did the delegates come and talk to you?

THE WITNESS: No. We went off the ship. They called us off.

TRIAL EXAMINER SEAGLE: You met at some midway point?

THE WITNESS: They were standing there all day. We walked off the ship, and walked out there.

TRIAL EXAMINER SEAGLE: At least for the present, I suggest the witness be allowed to testify, subject to the objection. What was the conversation?

By MR. CASTIELLO:

Q. Can you tell us what Mr. Jarvis had to say?

A. He said everything was all right, he said our lawyer and their lawyer is going to get together, and by the time we get back to Philadelphia, everything will be straightened out, we will have passes for our delegates aboard by the time we reach Philadelphia, and by no means no one would be discharged when they got there.

MR. CHILDS: I move to strike out the testimony on the ground that it is hearsay, incompetent and irrelevant.

TRIAL EXAMINER SEAGLE: Let me ask this:

After you were told that, did you go back to the ship?

THE WITNESS: We all went back there, and started to ship.

TRIAL EXAMINER SEAGLE: You started to work, and took the ship out of port?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And took the ship into Philadelphia?

THE WITNESS: Yes, sir.

MR. LUSTIG: The conversation the delegate had with you, was that in the presence of the representative of the steamship company?

THE WITNESS: Yes, sir.

MR. LUSTIG: And Mr. Schreider heard the conversation?

THE WITNESS: Well, he couldn't hear it, but he was over towards the building. He was away altogether when we came up, they walked away.

TRIAL EXAMINER SEAGLE: How far away was Mr. Schreider at the time?

THE WITNESS: I would say about fifty feet.

TRIAL EXAMINER SEAGLE: Was the captain nearby, too?

THE WITNESS: The captain and Mr. Schreider was together.

TRIAL EXAMINER SEAGLE: Was he about the same distance as you were?

THE WITNESS: Yes.

MR. CHILDS: You don't mean to say this took place in earshot of the ship's officers?

THE WITNESS: No, sir.

MR. CHILDS: In fact, you were having a private conference with your own crowd, weren't you?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: That is apparent. The witness stated they were about fifty feet away.

MR. CHILDS: At this time I want to renew the motion to strike out the testimony as to the conversation of this witness with Jarvis, on the ground it is hearsay, incompetent and irrelevant.

TRIAL EXAMINER SEAGLE: The motion is denied.

By MR. CASTIELLO:

Q. As a result of what Mr. Jarvis said, what action did the crew take?

A. They all felt good about it, they felt as though they had won.

Q. What did you do?

A. We all hustled back to the ship and went to work, those who were supposed to be at work took up where they left off at.

Q. They all went back to work?

A. I went right on down to the engine room, which it was my turn to be down there. I stayed there until ten minutes of eight, until I was relieved. I was only down there about fifteen minutes.

Q. Did everybody who had struck go back to work?

A. Yes, sir.

Q. When did the ship sail?

A. It sailed about 8:30 that night.

Q. That same day?

A. About an hour and a half after we went back to work.

Q. That was the sailing date, was it not?

A. Yes, sir.

Q. Then where did the ship proceed?

A. It proceeded to Philadelphia.

Q. When did the ship arrive in Philadelphia?

A. It arrived July 25th, on a Monday.

Q. Does the ship take seven days to make that trip?

A. Yes, sir.

Q. Before you arrived in Philadelphia, can you tell us whether or not there was any meeting of the crew on the ship?

A. There was.

Q. When did this meeting take place?

A. That took place on the 24th, on Sunday, the day before we came in.

Q. What was this? A meeting that took place?

A. It was a meeting among the union.

Q. A meeting among the union. How many were present?

A. There was twelve of us present.

Q. Who was missing?

A. Hughes was missing. He was at work.

Q. Where did this meeting take place?

A. In the sailors' forecastle.

Q. Can you tell us what the purpose of the meeting was?

A. The purpose was to straighten out what we were going to do when we got in.

Q. What do you mean by that?

A. Well, we didn't know how we stood. We didn't know whether the delegates would be allowed to come on board or not when we got in, so we made a motion, and passed it, that if, by any chance, any of us got fired, the rest was going to strike with us, walk off with us.

TRIAL EXAMINER SEAGLE: If who got fired?

THE WITNESS: If any of us got fired for union activities, the rest would stick with them.

By MR. CASTIELLO:

Q. You testified that there was an agreement that nobody would be fired, did you not?

A. Yes, sir; we were just taking precautions.

Q. Who presided at that meeting?

A. You mean who attended it?

Q. No, who was in charge of the meeting?

A. Why, Joe Warren was chairman.

Q. Did you have a secretary at the meeting?

A. Yes, Smith was recording secretary.

Q. Did the ship then dock on July 25th at Philadelphia?

A. Yes, sir.

Q. What happened when the ship docked at Philadelphia, as far as you saw and heard?

A. When we got in, as soon as we got tied up, I didn't see no delegates out on the dock, so I went up to the union hall, I was up there and talked to Paul Palazzi, and I told him what the set-up was, and on my way out, as I passed the office, I saw a lot of men in there, and a lot of suitcases.

Q. What office are you speaking of?

A. Mr. Sherry's office.

Q. That is near the dock?

A. Yes, sir, that is on the dock, the alleyway going out. So I stopped and talked to a fellow that was standing on the side, and I asked him what it was all about. He said, "Why, youse guys was fired. They are getting a full crew."

MR. CHILDS: I object to that.

MR. CASTIELLO: I think the objection is proper. I don't mean it for any evidence; just to show the trend of the story.

TRIAL EXAMINER SEAGLE: The motion is granted. I presume you meant a motion to strike?

MR. CHILDS: Yes, sir.

By MR. CASTIELLO:

Q. Then what did you do?

A. I went on up to the union hall in Philadelphia, and I told Paul Palazzi about it.

TRIAL EXAMINER SEAGLE: To clarify the record, I should say motion to strike with reference to the testi-

mony as to what somebody told him about the company's intention.

MR. CHILDS: Yes.

MR. CASTIELLO: But not what he had seen, of course.

TRIAL EXAMINER SEAGLE: Yes, that is so,

THE WITNESS: I told Paul Palazzi how everything was down there, and he said not to worry, he said they can't do that.

MR. CHILDS: Just a minute. I object, and move to strike out the answer as hearsay.

TRIAL EXAMINER SEAGLE: Will you read the answer?

(The reporter read the last answer.)

TRIAL EXAMINER SEAGLE: The motion is denied.

By MR. CASTIELLO:

Q. Then did you return to the ship?

A. Yes, I returned to the ship, and about three o'clock in the afternoon, or three-thirty, they started to pay off.

Q. What time had the ship docked in Philadelphia?

A. At noon.

Q. And about 3:30 they started to pay off?

A. Yes, sir.

Q. Tell us about your being paid off.

A. I went in, and the captain paid me off, and I signed clear, and I walked out in the alleyway.

Q. Just a minute. When you signed clear, did you sign clear with the Deputy United States Shipping Commissioner?

A. Yes, sir.

Q. Did you sign on again?

A. No, sir, we didn't sign on.

Q. Did you have any conversation with the Commissioner at that time about signing on?

A. No, sir.

Q. At this time, Mr. Tracey, in the sixteen months of——

TRIAL EXAMINER SEAGLE: May I interrupt for one moment?

MR. CASTIELLO: Surely.

TRIAL EXAMINER SEAGLE: When you say you were paid off, do you mean the whole crew, or you yourself?

THE WITNESS: No. Everybody.

TRIAL EXAMINER SEAGLE: Everybody was paid off?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: At the same time?

THE WITNESS: Yes, sir.

By MR. CASTIELLO:

Q. With reference to your being paid off, were you docked for any time you had taken during the strike?

A. No, sir.

Q. You were not docked for the work you were supposed to do but didn't do in the strike?

A. No, sir.

Q. Is that correct?

A. That is correct.

Q. The technical expression is "logged," is it not?

A. Logged; yes, sir.

Q. Mr. Tracey, in your service with the company, will you tell us what your experience has been, as far as signing off and on is concerned?

A. Well, as a rule you are supposed to sign on when you sign off.

Q. Just about the same time?

A. Yes. They have them all lined up on the table, and you go right along, you sign clear, and sign back on again, but there are times when they sign you on two or three days later.

Q. Has that ever happened to you?

A. Yes, sir; it has.

Q. On how many occasions?

A. I would say about four, three or four times.

Q. And on those times you signed off, but signed on two or three days later?

A. Yes, sir.

Q. In the meantime, between the time you signed off, and the time you signed on, what, if anything, did you do?

A. I done my regular eight hours' work.

Q. For the company?

A. For the company.

Q. Were you on their payroll?

A. I got paid for it.

Q. You were considered an employee?

A. Yes, sir.

Q. If you do not, or, you are not discharged, in your experience did you always get the opportunity to sign on again?

A. Yes, sir.

Q. Can you tell us what the practice is in the eve you do not want to reship or sign on again, how do you go about notifying the company?

A. When you are paid off, you sign clear, and you just tell the captain that you are not signing on, and you are through.

Q. And that is all there is to it?

A. That's all.

Q. On those occasions when you did not sign on immediately after you had signed off, was that the end of your job?

A. No, sir. You were never through until you were told so.

Q. Now, this day you signed off, but you didn't sign on, did you?

A. No, sir.

Q. Then what happened, in point of time?

A. I took my money and walked out in the alleyway as if nothing was wrong, I didn't know anything had went wrong.

Q. The alleyway, you say?

A. That is from the saloon, coming out along the ship side.

Q. The saloon and alleyway are all part of the ship, aren't they?

A. Yes, sir. So when I walked out, the first assistant, Pool, Mr. Pool, stopped me, he said, "Tracey, I have got to let you go."

Q. Yes?

A. I said "All right, First. Have you got any reason for it?"

He said, "Well, now, don't ask me, Tracey." He said, "See the chief engineer."

I said, "All right, I will." So I went around the alleyway a little further, and I met the chief engineer.

Q. Who was he?

A. Mr. Norton. So he said, "Did the First tell you, Tracey, that you are through?"

I said, "Yes, sir, chief, but he didn't give me any definite answer or reason why." I said, "Could you?"

He said, "Why, yes." He said, "I let you go through the action you have taken in the engine room." He said, "You and Elmer."

Q. Did he say the actions where?

A. In the engine room.

Q. The actions at Houston, Texas?

A. Yes, sir.

Q. Then what did you do? What did you say?

A. I said, "All right, chief, that is satisfactory to me," and I walked right back to my forecastle.

Q. You walked back to your forecastle?

A. Yes, sir. By the time I got back there, I started telling them what had happened, and as the rest of them paid off and came back, I found out there were four others fired with me.

Q. Who do you mean by "them" that you had told?

A. The fellows that were back there. There were three or four already back there, had their money, were already back there.

Q. Referring to other members of the union?

A. Yes, sir.

Q. Who were the fellows who were discharged?

A. Tracey, Warren, Pfuhl, Smith, Ferguson and Tracey.

Q. Tracey, meaning yourself?

A. Meaning myself.

Q. You testified previously that there were thirteen men in your union?

A. Yes, sir.

Q. Were the other eight fired?

A. No, sir.

Q. Had they also taken part in the strike?

A. Yes, sir.

Q. When you went back and told the other men that you had been fired, and the rest discussed that several others had been fired, what was the next step taken by the boys?

A. They decided they would strike again.

Q. Yes; go ahead.

A. We did so.

Q. How did you go about that?

A. Well, we wanted to sit down, but we were told we would have to get off, and it looked kind of rough for us, so we all decided it would be better if we went altogether, so we took everybody with us.

TRIAL EXAMINER SEAGLE: What do you mean when you say everybody?

THE WITNESS: The thirteen men.

TRIAL EXAMINER SEAGLE: All thirteen men quit and went on a strike?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Is that it?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And they were the same thirteen men who had been on strike in Houston?

THE WITNESS: The same thirteen; yes, sir.

By MR. CASTIELLO:

Q. When you went back to the sailors' forecastle, and you met the other members of the union there, while you were hanging about there, did any of the officers of the ship approach you?

A. Yes, sir; the first assistant.

Q. What is his name?

A. Rexford Taylor.

Q. T-a-y-l-o-r?

A. Yes, sir.

Q. What did he say?

A. He came back, he told me, when I was packing my bag, he said, "Come on, Tracey, make it snappy and get off the ship."

Q. Did he tell you why you were to get off the ship?

A. No, he didn't say why. He just said, "Get off."

Q. In your previous testimony, you named thirteen men who were members of the union, is that correct?

A. Yes, sir.

Q. You say five of these men were discharged that day?

A. Yes, sir.

Q. And did the remaining other men walk out?

A. Yes, sir.

Q. Can you tell us why they struck?

A. That was the agreement we came to at our meeting the day before.

Q. What meeting?

A. That was Sunday.

Q. Then you left the ship?

A. Yes, sir.

Q. Now, Mr. Tracey, did the company ever offer you your job back?

A. No, sir.

Q. Did you ever apply for your job?

A. No, sir.

Q. Can you tell us why you didn't?

A. Well, I figured it wouldn't be any use.

Q. What do you mean by that?

A. I figured as long as I was fired, they wouldn't give me my job back if I went down and asked for it again.

Q. Have you done any work since July 25, 1938?

A. No, sir; I have not.

Q. Have you attempted to get a job?

A. Yes, sir. I am on the shipping list in the union hall, waiting my turn, ever since.

Q. In order that that be clear, does the union maintain its own shipping list at the union hall?

A. Yes, sir.

Q. And each man, as he is unemployed, is placed on that list?

A. Yes, sir.

Q. And are you still waiting your turn?

A. Yes, sir.

Q. Do you wish to have your job back?

A. Yes, sir; I would like to have it back.

MR. CASTIELLO: You may cross-examine.

TRIAL EXAMINER SEAGLE: The hearing is recessed for a few minutes.

(A recess was taken at this time.)

TRIAL EXAMINER SEAGLE: The hearing will come to order. Will the witness resume the stand, please.

MR. CASTIELLO: Mr. Examiner, Mr. Childs has indicated his willingness to stipulate with me that the keep to which there has been testimony by Mr. Tracey, is valued at two dollars fifty cents per day.

MR. CHILDS: I would suggest that we defer an answer to that until tomorrow morning.

TRIAL EXAMINER SEAGLE: Very well. At that time you will be ready to stipulate as to what the amount is?

MR. CHILDS: Yes, sir.

MR. CASTIELLO: May I ask the witness one further question?

By MR. CASTIELLO:

Q. Do you know how much your keep was worth?

A. Since I have been out, you mean?

Q. No. You testified you got eighty-five dollars a month and keep.

A. Yes, sir.

Q. How much was your keep worth?

A. I wouldn't know that.

Q. You wouldn't know it?

A. I wouldn't know that.

MR. LUSTIG: By "keep" you mean your board and lodging you received on board ship?

THE WITNESS: Yes.

MR. LUSTIG: Does that include laundry, too?

THE WITNESS: No, sir.

By MR. CASTIELLO:

Q. That is just meals and lodging?

A. That is all.

MR. CASTIELLO: That is all.

CROSS-EXAMINATION.

By MR. CHILDS:

Q. If you were re-employed by the Southern Steamship Company, and if you were, say, out on the high seas, and you felt that the Southern Steamship Company was not performing its obligations to the union, would you again disobey the orders of the ships' officers?

MR. CASTIELLO: Just a minute. Mr. Examiner, the question is purely hypothetical. Let us confine ourselves to the actual facts in this case.

TRIAL EXAMINER SEAGLE: Are you referring to some period in the future?

MR. CHILDS: Yes.

TRIAL EXAMINER SEAGLE: I don't see how that is relevant. The objection is sustained.

By MR. CHILDS:

Q. When you got back to Philadelphia on the 25th of July, 1938, you state you went up to the union hall. That was before you were paid off?

A. Yes, sir.

Q. Didn't your duties require you to stay on the ship during that period?

A. No, sir.

Q. What time did you arrive at port?

A. Around noon.

Q. And what was the practice about being on the ship, when you were paid off?

A. There isn't any.

Q. What watch did you have?

A. Four to eight.

Q. Four to eight in the afternoon?

A. Yes, sir.

Q. What time did you leave the ship?

A. Around noon.

Q. What time were you back on the ship?

A. About 12:30.

Q. Referring to what happened down at Houston, isn't it a fact that the only real question that was discussed down there was the question as to the right of your shore delegates to get on board the boats of the Southern Steamship Company?

A. Passes for our union delegates, and union recognition.

Q. The real issue was the right of your delegates to get on the boat, wasn't it?

A. Yes, sir.

Q. Referring to what took place on the steamship "City of Fort Worth" at Houston on July 18, 1938, it is a fact, isn't it, that the crew have their stations, and duties to perform, on a ship?

A. That's right.

Q. So, referring to that particular day, the members of the crew had their stations and duties assigned to them?

A. Yes, sir.

Q. Their work for that day?

A. Yes, sir.

Q. And they knew what they were supposed to do on that day?

A. That's right.

Q. You say, in your testimony, that Captain Rudan talked to you, the crew, at 8 o'clock in the morning. Are you sure that it was 8 o'clock, or was it as late as 10:30 that the captain himself gave you orders?

A. Well, I wouldn't say just what time the captain came back from ashore.

Q. Do you recall the captain coming aboard that morning and giving thirteen members of the crew, of whom you were one, orders to perform your duties, and your refusing to obey those orders?

A. No, sir.

Q. Isn't it a fact that he came aboard the ship with Mr. Schreider, with Mr. Norton and with Mr. Helland, the first mate, and ordered you men to go to work?

A. Yes, sir, he told us to.

Q. Isn't it a fact that you refused to go to work?

A. No, sir, we didn't refuse to.

Q. Did you go to work?

A. No, sir.

Q. Do you recall that he gave you until 11:30 in the morning to make up your minds whether you would go to work or not?

A. About a quarter to ten, I would say.

Q. And about 11:30 he gave you another order to go back to work, and you wouldn't go to work?

A. Yes, sir.

Q. Do you recall that the deputy shipping commissioner came to the ship, and read the law to you relating to the duties of men under articles?

A. Yes, sir. He didn't read nothing to us. He just told us that, out of his own mind.

Q. He told you it was your duty, under the shipping articles, to perform your duties?

A. To bring the ship back, yes.

Q. What was it he said?

A. He told us it was under our contract that we should bring the ship back, and we had no right to strike.

Q. And you told him that, regardless of the law, you would not go to work, didn't you?

A. We knowed there were no such law.

Q. That is, you know when you sign shipping articles which require you to obey the lawful commands of the master, you nevertheless have a right to disobey those commands, is that what you mean to tell the Board?

A. No, sir. I mean to tell them that when we are up against the dock, it is altogether different than it is out at sea, we have a right to quit any time we want, we can be discharged any time in port, so that we don't have to bring the ship back if we don't want to.

Q. Do you know the official log book of the steamship "City of Fort Worth"?

A. No, sir, never saw it.

Q. You never saw it?

A. No, sir.

Q. Do you know that there were entries made on July 18, 1938, about the refusal of members of the crew to report to their duties and stations?

MR. CASTIELLO: Just a minute.

THE WITNESS: I never saw it.

MR. CHILDS: I asked him if he knew.

MR. CASTIELLO: He already said he didn't see it.

MR. CHILDS: All right.

By MR. CHILDS:

Q. When you were paid off at the port of Philadelphia, was any entry from the log book shown to you?

A. No, sir.

Q. It is a fact, isn't it, as I think you have testified before, that the crew have their regular duties or stations to perform on a ship, isn't it?

A. Yes, sir.

Q. Do you recall one of the crew named Cassanova?

MR. LUSTIG: Crassovaz.

MR. CHILDS: Yes. It is too classical the way I put it.

By MR. CHILDS:

Q. Do you know whether he is now working for the Southern Steamship Company?

A. Yes, sir.

Q. Referring to the conversation at Houston, Texas on July 18, 1938, between you and other members of the crew, and the shore organizers, it is a fact, isn't it, that that conversation took place out of earshot of the officers of the ship?

A. Yes, sir.

Q. Had you, yourself, or any other member of the crew, had any conversation with the officers about the termination of your actions on the vessel?

A. No, sir.

Q. That was all in the hands of the shore organizers?

A. Yes, sir.

Q. Referring to these shipping articles, it is a fact, isn't it, that under the law, you sign on shipping articles for a voyage, or for a return voyage, don't you?

A. Yes, sir.

Q. And, in this case, the shipping articles called for a voyage from the port of Philadelphia to the port of Houston and return to Philadelphia, didn't they?

A. Yes, sir.

Q. And when you were paid off at the end of this voyage, you say you expected you would be taken on the ship again, is that right?

A. Yes, sir.

Q. Referring to the eight men, aside from yourself and Warren and Pfuhl and Smith and Ferguson, so far as you know, those men didn't have any conversation with any officers of the ship at the time they walked off, did they?

A. No, sir, not that I know of.

Q. It is a fact, isn't it, that when you and the other four I have last referred to left the ship, you made no demands for wages or hours, or for an agreement, did you?

A. No, sir.

Q. Isn't it also a fact that, referring to the situation down at Houston, you didn't take up with anybody on the ship the question of wages, hours or conditions of employment?

A. No, sir.

Q. You did not submit any agreement?

A. No, sir.

MR. CHILDS: Mr. McKaig wants to ask a question.

MR. CASTIELLO: It seems to me it would be orderly procedure here to have cross-examination by one of counsel for the Respondent.

TRIAL EXAMINER SEAGLE: I certainly think that not more than one attorney should be permitted at any one stage of the examination.

By MR. CHILDS:

Q. You said, as I understand you, on the cross-examination, that you did not refuse to obey orders, but you did refuse to go to work. What is the distinction in your mind between the two things?

A. We didn't refuse to do anything. We just struck.

Q. The captain told you to go to your stations, and you didn't go, isn't that a fact?

A. We were on a strike.

Q. I asked you, didn't the captain tell you to go to your stations, and you didn't go?

A. Yes, he told us.

Q. And the other members of the crew didn't go, that is, the thirteen didn't go?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

MR. CHILDS: That is all.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Referring back to the situation during the strike, when the captain approached you, did he approach you on several occasions and speak to you?

A. Yes, sir.

Q. Can you tell us whether or not he inquired whether anybody had anything against him?

A. Yes, he did.

Q. What was that?

A. Why, I believe he asked everybody if he had done anything to them, were they mad at him, and put it in a way that we were fighting against him and not the company. He told us he had treated us all right, and we al-

ways got along good, and he didn't think it was fair to do this to him.

Q. And did you people make any reply?

A. We told him.

Q. Through whom did you reply?

A. Who?

Q. Who replied for you people?

A. Joseph Warren. We told him we had no feelings against the officers at all whatsoever, that we were strictly just out for our delegation to be let aboard the ship, and recognition of the union. There were no personal feelings whatsoever.

Q. In order to clear one point up, was Mr. Joseph Warren present, if you know, at these conferences on the dock between the master, the local agent, and the shore delegates?

A. Yes, sir.

Q. You testified on cross-examination that you did not take up any agreement, that is, the members of the crew did not take up any agreement, that is on wages and hours with the master or the officers. Can you tell us why you didn't?

A. We didn't feel as though we were strong enough to ask for any agreement of any kind.

Q. Who was to take up those agreements for you?

A. The shore delegates were supposed to bring the agreements aboard.

MR. LUSTIG: Let me ask this:

TRIAL EXAMINER SEAGLE: No, just a moment.

By MR. CASTIELLO:

Q. As a matter of practice, do you know whether or not the crew ever takes up the matter of an agreement on wages and hours with the ship's master?

A. No, sir.

Q. Who does that?

A. The union officials.

MR. CASTIELLO: That is all.

MR. CHILDS: If that is the end of this witness' testimony, I now renew my motion to strike the conversation between this witness and the shore delegates occurring at Houston on July 18th, on the ground that the testimony is hearsay, and not competent, and irrelevant.

TRIAL EXAMINER SEAGLE: I believe I already denied that motion. Are you renewing it now?

MR. CHILDS: I won't do it again.

TRIAL EXAMINER SEAGLE: The motion is denied.

MR. CASTIELLO: All right, Mr. Tracey, that is all.

TRIAL EXAMINER SEAGLE: I have a few questions. I believe you testified that July 18th, during the strike, you had conversation with various officers of the ship?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Do you recall what any of those conversations were?

THE WITNESS: Well, I can't recall them so well, outside of the one where the captain wanted to know whether we was against him, if we had anything against him or any other of the officers, and he came back, trying to get us to go back to our stations.

TRIAL EXAMINER SEAGLE: Did the captain, or any one of the other officers ask you why you were going on strike?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: What grievance you had?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: He did ask you that?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Do you remember what you told him?

THE WITNESS: We told him all we wanted was passes for our delegates.

TRIAL EXAMINER SEAGLE: That is all you said?

THE WITNESS: And recognition for the union.

TRIAL EXAMINER SEAGLE: Are you sure you told him also that you wanted recognition for the union?

THE WITNESS: Yes, I believe so. As far as I know, I think we told him.

TRIAL EXAMINER SEAGLE: Did you do any of the talking when the crew was being interviewed by either the captain or one of the other officers?

THE WITNESS: Well, no. Warren done that.

TRIAL EXAMINER SEAGLE: Did Warren do all the talking?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Is it your testimony that Warren made this reply to the captain?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And is it your testimony that Warren told the captain that one of the reasons you were striking is that you wanted recognition of the union?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: You remember that?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Distinctly?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: You have no doubt about it?

THE WITNESS: No doubt at all.

TRIAL EXAMINER SEAGLE: Now, you have also testified that after your delegates had this conference with representatives of the company on the dock, Mr. Jarvis came over to you and reported to you what settlement had been made. Do you remember exactly what he said?

THE WITNESS: He told us that everything is all right. He said by the time the company's lawyer and our lawyer would get together, by the time we got back to Philadelphia, our delegates would have passes to come aboard.

TRIAL EXAMINER SEAGLE: Are you reporting exactly what Mr. Jarvis told you?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Or, are you merely giving me the substance of the conversation?

THE WITNESS: That is what he said.

TRIAL EXAMINER SEAGLE: You mean in so many words?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Exactly?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And you remember, without any variations, every word used?

THE WITNESS: Just as close as possible. I can pretty near remember everything he said.

TRIAL EXAMINER SEAGLE: Then Mr. Jarvis didn't say anything about having been assured the company would recognize the union.

THE WITNESS: No—well, he felt as though they were true in their statement, that they gave him.

TRIAL EXAMINER SEAGLE: What do you mean, exactly by "true in their statement"?

THE WITNESS: He must have thought, anyhow, that the company's representative meant they would keep their word, and our delegates would have passes when we got back to Philadelphia, or otherwise, he wouldn't have left us bring the ship back, we would still be sitting there.

TRIAL EXAMINER SEAGLE: As far as you know, Mr. Jarvis had only been told that the company had assured him that the union would get passes to board the ship?

THE WITNESS: That is right.

TRIAL EXAMINER SEAGLE: Did Mr. Jarvis say anything at that time about the company having agreed to recognize the union?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: He said nothing about that?

THE WITNESS: Nothing about that.

TRIAL EXAMINER SEAGLE: I believe you testified that sometimes, at the end of a voyage, you would sign right on again, but that other times, some days would elapse before you did that?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: I want to ask you this: Did that depend upon the next sailing date of the ship?

THE WITNESS: No. The sailing was scheduled at all times on this particular line.

TRIAL EXAMINER SEAGLE: How much time elapses between one and another sailing?

THE WITNESS: One trip is five days, and the next trip is six days.

TRIAL EXAMINER SEAGLE: You mean you are here in port for either five or six days?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And you say that, although the interval between sailings does not vary, that sometimes you sign up immediately, and sometimes only after a few days, is that correct?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Do you know whether, on a coastwise voyage, Federal law requires shipping articles?

THE WITNESS: I don't believe it does. I couldn't say.

TRIAL EXAMINER SEAGLE: What I mean is, is it compulsory under Federal law?

THE WITNESS: I wouldn't know.

TRIAL EXAMINER SEAGLE: You don't know. Do you know whether on this particular voyage that ended on July 25th you had signed articles for that voyage only, or for a certain period of time?

THE WITNESS: I signed for the round trip.

TRIAL EXAMINER SEAGLE: The articles were specifically limited to the round trip?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And did not extend beyond the termination of that trip?

THE WITNESS: No, sir. On payday the trip was through.

TRIAL EXAMINER SEAGLE: You enumerated the thirteen men who went on strike. Among them was Smith.

Is that the same Smith who was discharged on July 25th by the company?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: You also enumerated a man by the name of Pfuhl. Is that the man who was discharged by the company?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And is that true of Warren?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And of Ferguson?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: That is all.

MR. CASTIELLO: I want to take up one thing, if I may.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. The Examiner has asked you what Mr. Jarvis said to all the fellows of the striking crew when you were on the dock, after you had left the conference with the company's agent and the shore delegates. Now, tell us everything that Mr. Jarvis said, will you please?

MR. CHILDS: That is objected to on the ground it has already been gone into. It is covered by questions of his Honor. I see no reason why it should be further examined into.

TRIAL EXAMINER SEAGLE: The objection is overruled.

MR. CHILDS: Of course, I also make the same objection as before to the testimony as hearsay.

TRIAL EXAMINER SEAGLE: The objection is overruled.

THE WITNESS: Well, when he called us off the ship, he waved to us and brought us off the ship. We all went out there, the whole thirteen of us, or the whole twelve of us, one was already out there.

He told us that everything was settled, that everything was all right. He said the company's lawyer and our lawyer will get together, and they will negotiate, or whatever they were going to do, and our delegates would have passes to come aboard when we reached Philadelphia, and that there would be absolutely nobody fired when we got there.

By MR. CASTIELLO:

Q. Are you sure that is what was said?

A. Yes, sir.

MR. CASTIELLO: Now, Mr. Childs, I think, perhaps, you and I can help the Examiner by stipulating on coastwise articles, whether or not they are compulsory.

MR. CHILDS: Yes.

MR. CASTIELLO: It is my understanding that they are not.

MR. CHILDS: It is my understanding they are not compulsory.

TRIAL EXAMINER SEAGLE: In other words, it is made optional with the shipping company whether articles will be signed in coastwise service?

MR. CHILDS: That is right, it is optional.

MR. CASTIELLO: Can we stipulate all of these men were under coastwise articles?

MR. MCKAIG: They were on coastwise articles, signed in front of shipping commissioners.

MR. LUSTIG: Were the articles for a round trip, or for a period of time?

MR. MCKAIG: For a round trip back to Philadelphia, signing on at Philadelphia for a round trip back to Philadelphia.

MR. LUSTIG: Where the time was mentioned, that wasn't followed, in all cases.

MR. MCKAIG: Just for one round trip back to Philadelphia.

MR. LUSTIG: You know what I refer to. There is a time limit.

MR. MCKAIG: In some articles they have a six months' limit, or a three months' limit.

MR. LUSTIG: That is right.

MR. MCKAIG: We don't sign our articles that way. The articles are signed for one round trip from Philadelphia, signed on at Philadelphia.

MR. CASTIELLO: That is the understanding of Board's counsel, and I understand from the attorneys that that is their understanding also, first, that coastwise articles are not compulsory; second, that the articles under which these men signed were all coastwise articles.

Third, that that was for that particular round trip.

TRIAL EXAMINER SEAGLE: That seems to be also the understanding of the company.

MR. CHILDS: We also contend that when the articles are signed, they have binding, legal effects. That is a matter of law that can be submitted to your Honor at the proper time.

TRIAL EXAMINER SEAGLE: That is another question.

MR. CHILDS: Yes.

TRIAL EXAMINER SEAGLE: Are there any further questions?

RE-CROSS-EXAMINATION.

By MR. CHILDS:

Q. When his Honor asked you about your conversation with Mr. Jarvis, the whole conversation, you told him, as I recall it, that it was understood that the passes were to be issued to the organizers when the ship got to Philadelphia, is that right?

A. That's right.

Q. You also told me that the real question that was involved down there at Houston was not the question of signing an agreement or something of that kind, but it was a question of the right of the organizers to go on to vessels?

A. Yes, sir.

Q. There was no discussion down there at Houston about what was to be done with you men that had taken part in this action on the ship, was there?

A. Yes, sir.

Q. I recall you told the Trial Examiner that the conversation of Mr. Jarvis was simply that the organizers be given passes when you got back to Philadelphia?

A. He said also there would be no one fired when we got to Philadelphia.

Q. You were asked a question as to what the conversation was, and you didn't mention that the second time.

TRIAL EXAMINER SEAGLE: I believe the witness did testify that was one of the understandings.

MR. CHILDS: He testified to that on the Board's examination.

TRIAL EXAMINER SEAGLE: Well, at some time or other.

By MR. CHILDS:

Q. As a matter of fact, you referred to the fact of the lawyers for the union, and the lawyers for the company?

A. Yes, sir.

Q. Wasn't it a fact that your understanding was, from what Mr. Jarvis said, that the lawyers were to come to some definite agreement on this subject?

A. That's right.

Q. And that agreement, of course, had to be reached after you men went back from the dock?

A. Yes, sir.

Q. So that if any understanding was arrived at, it was arrived at between the lawyers for the company and for the N. M. U., is that right?

A. That's right.

MR. CHILDS: That is all.

RE-CROSS-EXAMINATION.

By MR. LUSTIG:

Q. You were not there when this agreement was arrived at between the lawyers, were you?

A. No, sir; we were out at sea.

TRIAL EXAMINER SEAGLE: That is apparent.

The witness is excused.

(Witness excused.)

MR. CASTIELLO: Mr. Ferguson.

ELMER JOSEPH FERGUSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Will you state your full name.

A. Elmer Joseph Ferguson.

Q. And are you the same Elmer J. Ferguson whose name is in the complaint?

A. I am.

Q. How old are you, Mr. Ferguson?

A. 35.

Q. Where do you live?

A. 1230 Dailey Street.

Q. Philadelphia?

A. Philadelphia.

Q. Are you married?

A. Yes, sir.

Q. Have you any children?

A. Four.

Q. Are they minors?

A. Yes.

Q. How long have you been going to sea?

A. Since 1919.

Q. In what capacity?

A. Fireman, oiler, wiper, deck engineer, junior engineer.

Q. Have you ever worked for the Southern Steamship Company?

A. Yes, I have.

Q. When did you first go to work for them?

A. I think it was 1933.

Q. In what capacity?

A. Fireman.

Q. How long did that service last?

A. One round voyage.

Q. Did you quit or were you discharged?

A. No, I missed the ship in Philadelphia.

Q. Did there come a time when you were again employed by the company?

A. Yes, in 1937, July 24th.

Q. July 24, 1937?

A. Yes.

Q. In what capacity were you hired?

A. Fireman.

Q. How long did you serve this last time?

A. From July 24th to July 25, 1938.

Q. That is, from July 24, 1937, to July 25, 1938?

A. Yes, sir.

Q. And were you discharged or did you quit?

A. I got discharged.

Q. Now, Mr. Ferguson, at the time of your hiring on July 24—did you say July 24, 1937?

A. Yes, sir.

Q. Can you tell us who hired you?

A. I got the job from the Seamen's Institute, to report down to Mr. Sherry, the marine superintendent.

Q. Is that the same gentleman who is sitting here?

A. Right there (indicating).

Q. Did you report down to him?

A. I did.

Q. Can you tell us any conversation you had with Mr. Sherry at the time you were hired?

A. Mr. Sherry asked me whether I was married or whether I had any children. I said yes. Then he stopped and studied for a few minutes, and he said to me, "Well, Mr. Ferguson, what union do you belong to?"

Q. "What union do you belong to?"

A. Yes. So I told him that at present I didn't belong to any.

Q. Did you, in fact, belong to any union?

A. No, I didn't.

Q. What did he then do or say?

A. Then he said to me, "Well, Ferguson, have you got your clothes with you?"

I said, "No, I will have to go home and get them." So he sent me home to get them, and I reported right back to him, and he gave me a slip to go down and see the chief engineer.

Q. Did you report to work?

A. Yes, I did.

Q. Were you hired then?

A. Yes.

Q. On what ship did you report for duty?

A. The "City of Fort Worth."
Q. Are you a member of the union?
A. I am.
Q. When did you join?
A. June 30, 1938.
Q. Where were you when you joined?
A. In Houston, Texas.

TRIAL EXAMINER SEAGLE: Did you say June 30?

THE WITNESS: Yes.

By MR. CASTIELLO:
Q. 1938?
A. Yes.
Q. At whose solicitation did you join the union?
A. John Tracey's.
Q. Is that the gentleman who just testified?
A. Yes.
Q. Do you recall the incident of the strike of July 18, 1938?
A. Why, yes.
Q. Where did that take place?
A. Houston, Texas.
Q. Aboard what ship?
A. The "City of Fort Worth."
Q. That is one of the company's ships, is it not?
A. Yes.
Q. Did you attend any meeting at any time at which plans for this strike were discussed?
A. I did.
Q. When did that meeting take place?
A. It took place Sunday, the 17th.
Q. Of what year?
A. 1938.
Q. Where did this meeting take place?
A. Up in the union hall.
Q. About how many members of the crew were present?

A. Thirteen.

Q. How do you know that thirteen were present?

A. There were thirteen members of the union on the ship.

Q. And they were all present?

A. Yes.

TRIAL EXAMINER SEAGLE: I was just wondering, Mr. Castiello, whether it was necessary to put all these questions, in such great detail, to the witness. Wouldn't it be possible to merely ask him whether he heard Mr. Tracey's testimony, and whether his testimony would be substantially to the same effect?

MR. CASTIELLO: That is perfectly agreeable with me, sir. It is purely in corroboration and will go into the same details.

TRIAL EXAMINER SEAGLE: I should think that would not be necessary. If his answer would be yes, that he would, in effect, be testifying to the same effect as the previous witness, it seems to me unnecessary. Of course, counsel for the Respondent would have the privilege of cross-examining him.

MR. CASTIELLO: I shall pursue that policy, and the suggestion is an excellent one. Wherever there are certain other matters, I shall want to go into those in detail.

TRIAL EXAMINER SEAGLE: I realize there are some points upon which you may want the witness' testimony, but it seems to me, at present, you are simply asking the witness questions which have already been answered by Mr. Tracey.

By MR. CASTIELLO:

Q. Did you hear Mr. Tracey's testimony?

A. I did.

Q. Were you present here?

A. I was.

Q. Is your recollection of what took place just about how Mr. Tracey described it when he was on the stand?

A. Yes.

Q. What was your understanding as to the reasons for having gone on strike?

A. Well, for passes to be issued to our shore delegates on both ends, in Houston and Philadelphia, and also for recognition of our union.

Q. What do you mean by recognition of your union?

A. In other words, just as soon as we could get recognition of our union, we could get better conditions aboard the ship.

Q. You mean working conditions?

A. Yes, sir.

Q. And hours, and so forth?

A. Yes.

Q. Your answer is "yes"?

A. Yes.

Q. Do you recall what Mr. Tracey said to the chief engineer on the day of the strike, when the chief engineer came below, in the engine room?

A. Well, sir, John Tracey said to the chief—when the chief came down, the chief said to John Tracey, he said, "What's the matter, fellows?"

So, John Tracey said, "Well, chief, we are sitting down on the ship for recognition of the union, and passes to be issued for our delegates."

Q. What did the chief say?

A. Well, sir, he said that he didn't think he could do anything at all about that matter.

Q. You were to report for duty, were you, on the 8 to 12 shift?

A. I was.

Q. And you didn't, did you?

Q. Excuse me.

A. I did.

Q. You did report?

A. I did.

Q. Did you stay on?

A. No, I didn't.

Q. What did you do?

A. The policy is, to relieve the watch, to go below at ten minutes to eight, so I did, and when I got down there it was about ten minutes to eight. So John Tracey had told me the steam is already shut off on deck, and that the fires were secured. So I stood down there to see that the steam wouldn't get too low so that the auxiliaries wouldn't stop.

Q. Did there come a time, then, that you went up to the poop deck?

A. Yes, sir. The second assistant, about a quarter after eight or twenty-five after eight, I think it was, he told me, "Go on up, Ferguson, I will take care of things down here," which I did, I went up on the poop deck and sat with the rest of the fellows.

Q. Do you remember whether or not the local agent of the company had any statement to make to the crew as it was sitting on the poop deck?

A. Yes, sir. The agent and the captain both came back at several periods of time and ordered us off the ship.

Q. Yes?

A. And he kept pushing at us, "Well, fellows, do you fellows refuse to go to work?"

And we said no.

Q. What was your answer?

A. "No."

Q. Who spoke for you?

A. Joseph Warren.

Q. Did he do all the speaking?

A. Yes.

Q. Did you do any of it at all?

A. No, I didn't.

Q. Were you present when Mr. Warren spoke?

A. I was.

Q. What did Mr. Warren say, if anything, in answer to the captain's reminding you twice that you were under articles?

A. Well, sir, I can't recall anything like that.

Q. Can you recall whether or not the captain said anything about you being under articles?

A. No, I can't.

Q. Now, Mr. Tracey testified that the strike was ended because of a certain agreement. Were you present when you were notified as to why the strike was being called off?

A. Yes, I was.

Q. Where were you?

A. On the poop deck.

Q. Did you leave the ship with the other men?

A. I did.

Q. And did you go down on the dock?

A. I did.

Q. Did the shore delegate come over and speak to you gentlemen?

A. He did.

Q. Do you recall what he had to say?

A. Well, as near as I can remember——

MR. CHILDS: Same objection as made before.

MR. CASTIELLO: Yes.

TRIAL EXAMINER SEAGLE: You will have an exception to this whole line of examination.

I presume you are referring to the same delegate, Mr. Jarvis?

THE WITNESS: Yes.

By MR. CASTIELLO:

Q. What did Mr. Jarvis tell you?

A. Mr. Jarvis said, "Well, boys, go ahead and go back aboard the ship, and take the ship back to Philadelphia, and by the time she gets to Philadelphia, the company lawyer and the union lawyer will get together, within the seven

days it will take to get the ship back there, and they will make some arrangement to issue passes for our delegates at both ends," and that there wouldn't be anybody fired or logged, or any discrimination of any kind taken for any action that we took down there in Houston.

Q. Was there anything else said by him?

A. No, not as I recall.

Q. Did Mr. Jarvis say anything about union recognition?

A. No, he didn't.

MR. CASTIELLO: Perhaps, I can save some time, Mr. Childs, if I can know from you, whether or not you are pressing the defense that these men were not employees?

MR. CHILDS: Yes. We will press that defense, and all defenses.

MR. CASTIELLO: All right.

By MR. CASTIELLO:

Q. Mr. Ferguson, in the period of time that you worked for the company, approximately how many round trips did you make?

A. About fifteen, I should say.

Q. And did you sign articles for each of those round trips?

A. I did.

Q. In your experience in signing off and signing on, did there ever come a time when, after you had signed off, you did not immediately sign on again?

A. Yes, on one occasion, and that there occasion was at the time that the ship went in drydock.

Q. Did you sign off at that time?

A. I did.

Q. But you didn't sign on again?

A. No, we didn't.

Q. How long were you in drydock?

A. I should say three or four days, at least.

Q. What did you do in the three or four days?

A. Well, I did my eight hours aboard the ship.

Q. Were you paid for it?

A. Yes, I was.

Q. As far as you know, were you carried on the payroll?

A. Yes, I was.

Q. Did anybody tell you, after you had signed off, that you were no longer employed there?

A. No.

Q. When the time came for signing on, were you given an opportunity to sign on again?

A. Yes, I was.

Q. Do you recall the meeting aboard the ship of the Union on July 24, 1938?

A. I do.

Q. Is your testimony similar to Mr. Tracey's on that?

A. It is.

Q. The ship reached Philadelphia on July 25, is that correct?

A. It did.

Q. Tell me, on this day were you discharged?

A. I was.

Q. Will you tell me about the events leading up to your discharge?

A. When it came my time, in line, to go in to get my money, I went in, the captain paid me off, I signed the articles.

Then I said to the captain, "Captain, haven't I got a bonus coming to me?"

Q. What bonus were you referring to?

A. Any man employed continuously for one year is entitled to a twenty-five dollar bonus.

Q. Had you been employed continuously for one year?

A. Yes, sir, I was.

Q. From July 24, 1937?

A. Yes.

Q. Until July 25, 1938?

A. Until July 25, 1938.

Q. Is that correct?

A. Yes.

Q. What did the captain say then?

A. The captain said, "I am sorry, Ferguson, but on account of the action that you took on the other end, Mr. Sherry has ordered me not to pay it," and for me to go see Mr. Sherry.

Q. Did you go to see Mr. Sherry?

A. No, I didn't.

Q. Why not?

A. Because I didn't think there was any use.

Q. Why didn't you think there was any use?

A. Well, in the first place, if he was going to pay it to me, he would have let the captain pay it to me.

Q. Then, after you were paid off, where did you go?

A. I went through the passageway, and the chief engineer came up to me.

Q. What is his name?

A. Mr. Norton.

Q. Yes?

A. He says, "Ferguson, I have got to let you go."

Q. What did you say?

A. I said, "All right, chief."

Q. Before you learned that you were discharged, had you learned about the discharge of anybody else?

A. Yes, I did.

Q. About whose discharge had you learned?

A. John Tracey's.

Q. Were you paid for the time that you sat down in Houston?

A. I was.

Q. How much money have you earned since the time of your discharge?

A. Not a cent.

Q. Have you attempted to secure employment?

A. I have. I have registered down at the union hall.

Q. You have registered at the union hall?

A. Yes.

Q. What do you mean by that?

A. I am on the shipping list down there, and when it is my turn to ship out, I will ship out.

Q. Is that the same list Mr. Tracey spoke of?

A. Yes.

Q. Has the company ever offered you your job?

A. No, they have not.

Q. Have you ever asked for it?

A. No, I have not.

Q. Do you want to be reinstated?

A. I do.

Q. Do you want your job back?

A. I do.

Q. What were your monthly earnings on the ship?

A. Seventy-five dollars a month.

Q. Seventy-five dollars a month?

A. Yes.

Q. Did that include keep, also?

A. Yes.

Q. Do you know how much the value of keep is? Did you answer my question?

A. No, I didn't.

MR. CASTIELLO: Will you read the question.

(The reporter read the last question.)

THE WITNESS: Oh, the value of keep is about three dollars a day, I should say.

MR. CHILDS: The question is objected to and I move to strike out the answer. He was asked does he know the value of keep.

TRIAL EXAMINER SEAGLE: The motion is granted. I presume, Mr. Childs, that the company reckons keep at a certain value?

MR. CHILDS: Yes.

TRIAL EXAMINER SEAGLE: And so carries it on its books. It seems to me, since Mr. Childs agreed to state that figure, the question of the particular witness does not answer any purpose.

MR. CASTIELLO: I had this in mind: that in the event we could not arrive at a stipulation of how much the keep is, I wanted to have the opportunity to ask these witnesses, while they are here, if they would know.

By MR. CASTIELLO:

Q. You testified that your salary was seventy-five dollars a month?

A. I did.

Q. Is my understanding correct, that keep was in addition to your salary?

A. It is.

MR. CASTIELLO: That is all.

CROSS-EXAMINATION.

By MR. CHILDS:

Q. As I recall your testimony, you stated that when Captain Rudan asked you to go to your stations, that you did not refuse to go. Isn't it a fact that on several occasions on July 18, 1938, he ordered you and the other members of the crew, the other twelve members of the crew, to go to your stations, and you didn't go?

A. Yes.

Q. And that took place at approximately 10:30 in the morning?

A. Yes, it did.

Q. And again later in the day?

A. Yes.

Q. Referring to this conversation that you had with Mr. Jarvis, isn't it a fact that what was said there was that the company's lawyers and the lawyers for the Union were

to take up these various questions that you had been discussing and come to some agreement about them?

A. Yes, it was.

MR. CHILDS: I guess that is all.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Isn't it a fact that because——

MR. CHILDS: I object to that as leading.

By MR. CASTIELLO:

Q. Can you tell us whether or not——

MR. CHILDS: I object to that as leading.

MR. CASTIELLO: Wait until you hear the question.

TRIAL EXAMINER SEAGLE: I don't see how you can object to that question. It hasn't even been framed yet.

MR. CHILDS: I stand corrected.

By MR. CASTIELLO:

Q. Can you tell us whether or not it was because of this agreement or temporary arrangement to have an agreement later, that you sailed the ship?

A. Yes, it was.

Q. When you went back to work?

A. Yes.

Q. Is that the reason the strike was terminated?

A. Yes.

MR. CASTIELLO: That is all.

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: Back on the record.

By MR. CASTIELLO:

Q. You testified Mr. Jarvis said nobody would be fired for any part they took in the strike, is that correct?

A. Yes.

Q. Can you tell us whether or not that was also to be taken up later, or was that definitely settled at that time?

A. To my opinion, it was definitely settled right then and there.

MR. CASTIELLO: That is all.

RE-CROSS-EXAMINATION.

By MR. CHILDS:

Q. When you say to your opinion, isn't it a fact that you and the other twelve members of the crew expected that an agreement would be reached when these lawyers got together? Isn't that a fact?

A. Yes, it was.

MR. CHILDS: That is all.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. What part of the agreement did you understand would be reached when the lawyers got together?

A. That passes would be issued, and recognition of our union.

Q. As far as you were concerned, was the question of discrimination settled immediately?

A. It was.

Q. I might put it this way: Wasn't it your understanding——

MR. CHILDS: I object to his understanding.

MR. CASTIELLO: That is all.

RE-CROSS-EXAMINATION.

By MR. CHILDS:

Q. Isn't it a fact that what happened there with regard to the question of the organizers having the right to go on board the ships and the question of union recognition, and the question of what action was to be taken all along the

line, was something to be taken up by the lawyers for the Union and by the lawyers for the Southern Steamship Company when the boat got back to Philadelphia? Isn't that the reason you stopped the practice that was going on aboard the ship?

MR. LUSTIG: I object to the form of the question. It is too involved.

MR. CHILDS: I will reframe the question.

By MR. CHILDS:

Q Isn't it a fact that the ground upon which you discontinued this practice that was going on aboard the ship that day was the understanding that the lawyers for the Union and the lawyers for the company were to get together and enter into some agreement on the subject?

A. No, sir. I couldn't say anything about that.

MR. CHILDS: All right.

TRIAL EXAMINER SEAGLE: The witness is excused.

MR. LUSTIG: I would like to ask a question or two.

MR. CHILDS: I object to it on the ground my partner here wanted to participate in cross-examination, and was excluded, and I don't see why the Board's examination isn't sufficient.

MR. CASTIELLO: Of course, he is not my partner; I want you to understand that. He is a party to the procedure.

MR. CHILDS: I won't press that point.

MR. LUSTIG: May I point out that I am a party to the proceeding, and the Union is a party.

TRIAL EXAMINER SEAGLE: Are you sure it is only one or two questions?

MR. LUSTIG: I would like the opportunity to ask the witness some questions I think are material.

TRIAL EXAMINER SEAGLE: I have already ruled you may ask him one or two questions. Will you proceed to do so?

MR. LUSTIG: Yes, but I want it clearly understood that I don't recognize your right——

TRIAL EXAMINER SEAGLE: Would you mind addressing me as Trial Examiner, please, during the hearing?

MR. LUSTIG: I don't recognize the right of the Trial Examiner to circumscribe the questions I may ask.

TRIAL EXAMINER SEAGLE: No, I don't suppose you do.

CROSS-EXAMINATION.

By MR. LUSTIG:

Q. Now, Mr. Ferguson, you have worked for a year for this company, is that correct?

A. I did.

Q. And during that time you signed on and off about fifteen round trip articles?

A. I did.

Q. You say most of those articles were signed on and off, on board the ship, is that right?

A. They were.

Q. In most of the cases, the signing on and off was without an interruption in your work, is that correct? Do you understand what I mean?

A. No. You will have to explain it.

Q. All right. I will reframe it for you.

Was there any definite time that the articles were signed off or on during the course of a trip?

A. At the beginning of the voyage, and at the end of the voyage.

Q. At the end of the voyage?

A. Yes.

TRIAL EXAMINER SEAGLE: Well, Mr. Lustig, really, the witness has answered all these questions.

MR. LUSTIG: I would like to make it very clear, Mr. Trial Examiner, because these questions have arisen time and time again.

TRIAL EXAMINER SEAGLE: I am well aware of that fact; but the witness has been asked and has answered these questions. I don't see that any purpose is being served by your repeating them to the witness in slightly different form.

MR. LUSTIG: It is just that I wish to make perfectly clear by competent testimony what the practices are.

TRIAL EXAMINER SEAGLE: I think the witness' testimony already makes that sufficiently clear.

MR. LUSTIG: That is all.

TRIAL EXAMINER SEAGLE: The witness is excused.

(Witness excused.)

MR. CHILDS: Your Honor, I understand it is not necessary for me to keep repeating my motion to strike out all testimony of these witnesses relating to conversation with Mr. Jarvis and others.

TRIAL EXAMINER SEAGLE: No. You will have an exception to all testimony, as to the conversation between Jarvis and the employees who were on strike that day.

MR. CHILDS: All right. And that will extend to the future witnesses?

TRIAL EXAMINER SEAGLE: That will also extend to future witnesses who are asked the same question as to what the conversation was at that time.

Will you call your next witness?

MR. CASTIELLO: Mr. Smith.

EDWARD WILLIAM SMITH, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Will you state your full name, please?

A. Edward William Smith.

Q. Are you the Edward W. Smith who is named in the complaint of the Board?

A. Yes, sir.

Q. How old are you, Mr. Smith?

A. 19.

Q. Where do you live?

A. 2560 North 16th Street.

Q. Philadelphia?

A. Right.

Q. How long have you been going to sea?

A. About two years.

Q. What is the first time that you worked for the Southern Steamship Company?

A. June 22, 1936.

TRIAL EXAMINER SEAGLE: Mr. Castiello, I was just wondering whether all this testimony as to the past history of these employees who were discharged on July 25th is really necessary, unless the company questions their competency as seamen. I don't believe there is any such issue in this case, is there?

MR. CHILDS: There might be, as to some of these witnesses.

TRIAL EXAMINER SEAGLE: Pardon me?

MR. CHILDS: I say, I think that issue of the competency of some of these witnesses will arise.

TRIAL EXAMINER SEAGLE: As I understood you so far, it seemed to me it was your position that these men

were discharged because they had refused to obey orders.

MR. CHILDS: That is so, that is one of the grounds, but in some cases there may be other grounds.

TRIAL EXAMINER SEAGLE: Would you mind indicating in which cases you do expect to raise that issue? Otherwise, it seems to me we are going to waste a lot of valuable time.

MR. CHILDS: I understand that in this case the questions arise out of his conduct on this particular day, July 18, 1938.

MR. CASTIELLO: Relating to his competency?

MR. CHILDS: Relating to his conduct on the ship. That is true as to this man.

TRIAL EXAMINER SEAGLE: I understood you discharged these men because of their conduct during the strike. I mean, you took the position they had disobeyed the orders of the master.

MR. CHILDS: We did decline to re-employ these men, and among the grounds on which we declined to re-employ them was their disobedience to orders of ship's officers on that date, but in some cases that and other features were taken into consideration.

TRIAL EXAMINER SEAGLE: If there were other features, can you indicate to me now what they were?

MR. CHILDS: It will be necessary for us to give some consideration to that, Mr. Trial Examiner.

TRIAL EXAMINER SEAGLE: You mean you would not like to state it now?

MR. CHILDS: I would not care to state them right now.

TRIAL EXAMINER SEAGLE: You may proceed.

MR. CASTIELLO: In order to make my position clear, Mr. Trial Examiner, I did not ask other men questions as to their length of service.

TRIAL EXAMINER SEAGLE: I presumed you also had in mind qualifying them as witnesses who are going to testify with respect to various customs of the sea.

MR. CASTIELLO: Exactly, that is the reason. Not for the competency, but, if it becomes material, then the evidence is there.

TRIAL EXAMINER SEAGLE: It seems to me obvious that these men have been at sea, they were on their ship, consequently are competent to testify as to what the custom was, certainly with respect to the particular company they were working for.

MR. CASTIELLO: I have this in mind: Unless I first show they had been, and for what period of time, it would not appear.

TRIAL EXAMINER SEAGLE: I understand that, but I don't think you need go into very great detail on that score.

By MR. CASTIELLO:

Q. When was the last continuous service you had with the company?

A. July 25, 1938

Q. You don't understand my question. Starting back from July 25, 1938, when was the last time that you have been employed by the company, which included this whole period up to July 25th?

A. January 10, 1937.

Q. And from January 10, 1937, to July 25, 1938, you worked continuously?

A. That's right.

Q. In what capacity?

A. As a mess boy.

Q. As a mess boy?

A. Yes, sir.

Q. What was your salary?

A. Fifty-two dollars and fifty cents a month.

Q. And did you get maintenance, in addition to your salary?

A. That's right.

Q. Are you a member of the union?

A. I am.

Q. When did you join?

A. June of this year, 1938.

Q. Can you tell us who solicited your membership?

A. John Tracey.

Q. Is that the same John Tracey that took the stand?

A. That's right.

Q. Do you hold any office in the union?

A. Steward's delegate on board ship.

Q. On board which ship?

A. I was on the "Fort Worth" until I was fired.

Q. Incidentally, has your last continuous service with the company been on the "City of Fort Worth"?

A. That's right.

Q. Do you hold any other office in the union?

A. I do not.

Q. Do you recall the testimony of Mr. Tracey and Mr. Ferguson?

A. I do.

Q. Were you in the room when they testified?

A. Yes, sir.

Q. Does your recollection of the events at Houston and thereafter leading up to the strike, the alleged agreement which terminated the strike, conform with what these gentlemen testified to?

A. Yes, sir.

Q. What was that?

A. Yes, sir.

Q. As far as you personally are concerned, during the strike, did you have any conversation with Captain Rudan?

A. No. He asked me at one time during the day whether I refused to work.

Q. And what did you say?

A. All I replied was I was with the rest of the crew on strike.

Q. What did the captain say to that?

A. He didn't say anything.

Q. Were you present on the dock when this agreement that ended the strike was stated to you by one of the shore delegates?

A. I was.

Q. Will you tell us what your recollection of what the shore delegate said is?

A. Well, he said that everything was all right, and there would be no discrimination, that is, nobody would be fired when we got to Philadelphia on account of the action we took on that day of the strike and that they would talk over with our union officials the terms of the contract, for the union to be the sole bargaining agent between the members and the company.

Q. And what else?

A. That was all.

Q. Do you remember whether there was any mention about passes?

A. Yes, there was some mention that passes would be issued for the delegates to come aboard our ship.

Q. Do you recall the union meeting aboard the ship on July 24, 1938?

A. I do.

MR. CASTIELLO: I appreciate the fact some of these questions are leading, but I am trying to get over them as soon as I can.

TRIAL EXAMINER SEAGLE: It also seems to me this testimony is entirely cumulative.

MR. CATIELLO: That is true, but I want to make my position secure here.

TRIAL EXAMINER SEAGLE: You have already asked the witness whether his recollection of the events of July 18th, and what followed, would be substantially to the same effect as that of the previous witnesses.

MR. CASTIELLO: That is true.

TRIAL EXAMINER SEAGLE: And he said yes. I don't see that it adds anything to ask him these individual, specific questions.

MR. CASTIELLO: I merely will hit on the highlights as I go through.

By MR. CASTIELLO:

Q. You heard the testimony of Mr. Tracey and Mr. Ferguson relative to the custom in usage when one signs off and signs on again, did you not?

A. Yes, sir.

Q. Is that your understanding?

A. It is.

Q. Will you tell us about your discharge?

TRIAL EXAMINER SEAGLE: As to that, I think I would like a little more detail.

MR. CASTIELLO: Of course. I am going to give you the details on his discharge.

TRIAL EXAMINER SEAGLE: No, not on the discharge, but I mean, as to the custom of signing on and off.

By MR. CASTIELLO:

Q. How many round trips have you made for the company as a mess boy?

A. About twenty-five.

Q. In that time, for each of those twenty-five trips, did you sign each time for a complete round trip?

A. I did.

Q. At the end of each trip did you sign off immediately?

A. I did.

Q. In your experience did you ever have an occasion when you did not immediately re-sign?

A. I did.

Q. On about how many occasions?

A. Oh, I would say maybe about five times.

Q. How long after you have signed off did you sign on again?

A. Oh, within the time we were in port, that is, before we sailed on our next trip.

Q. How many days would you say, approximately?

A. About two or three days.

Q. And during those two or three days, were you in the employ of the company?

A. I was.

Q. Did you do your work?

A. I did.

Q. Did you work aboard the ship?

A. I worked aboard the ship.

Q. Were you paid for your time?

A. I was.

Q. When it came time for signing on, were you given an opportunity to sign on?

A. I was.

Q. Do you know what the practice or custom is with the Southern Steamship Company when a man there does not wish to sign on again, or the company does not wish him to sign on for another trip?

A. He is just paid off then.

Q. He is what?

A. He is paid off.

Q. And is he told at the time he is paid off that he is no longer needed?

A. If he is discharged, he is.

Q. In your own experience, when you signed off without having signed on immediately, did the company ever tell you at the time you signed on that you were no longer considered as one of their employees?

A. No, they never did.

Q. Or that your work was now through?

A. No.

Q. Or that you were not to report back to work again?

A. No, sir.

Q. Were you also paid for your time during the strike?

A. I was.

Q. I want you to relate for the Examiner the events leading up to your particular discharge. First, when did it take place?

A. It took place at 5 o'clock in the evening.

Q. Of what day?

A. Of the day we were paid off, July 25th, this year.

Q. Go ahead.

A. Well, I had been paid off about an hour previous to that.

Q. Now, just stop there. At the time you were paid off, did you sign off?

A. I did.

Q. Did you sign on again?

A. No, I didn't.

Q. Was there anything said about you signing on?

A. No, there wasn't.

Q. Go ahead.

A. Well, I continued my work, being as nobody told me I was fired until approximately 5 o'clock when the steward came in to the galley, that is, the kitchen.

Q. What is the steward's name?

A. A. Kirkdriver.

Q. K-i-r-k-d-r-i-v-e-r?

A. I don't know.

Q. Well, go ahead.

A. And he said to me, "Mr. Sherry said I will have to let you go."

Q. Do you know who Mr. Sherry is?

A. I do.

Q. Who is he?

A. He is marine superintendent of the Southern Steamship Company.

Q. Go ahead.

A. I asked the steward why I was being fired, and he replied that he didn't know. I asked him then why I wasn't fired with the rest of the men, that is, the other four, and he said he didn't know whatever.

Q. Had the other men been fired before you had?

A. They had.

Q. Do you recall Mr. Tracey's testimony that after you men, the five men named in the complaint, were fired, that this fact was then communicated to the other eight members of the Union?

A. I do.

Q. And that they then all decided to strike, in protest?

A. That's right.

Q. Is that correct?

A. That is correct.

Q. And is your testimony also that they did strike?

A. That is true.

Q. Is that strike still in existence?

A. It still is.

Q. Your answer is that it is?

A. It is.

Q. Has the company ever offered you your job?

A. No, they have not.

Q. Have you ever asked for it?

A. No.

Q. Can you tell us why you never did?

A. Well, I was fired, naturally I wouldn't expect it back.

Q. Since the date of your discharge, have you earned any money?

A. Yes. Approximately thirty-six dollars.

Q. And who was your employer?

A. A Mr. Cook, of the New York shipyards.

Q. Did you go to sea?

A. Yes. It was a trial run on a cruiser.

Q. A trial run on a cruiser?

A. A United States cruiser.

Q. Have you done any other work since that?

A. No, I have not.

Q. Have you attempted to secure other employment?

A. Yes, sir.

Q. How?

A. By registering on the shipping list at the union hall, and awaiting my turn.

Q. The N. M. U. shipping list?

A. That's right.

Q. And do you wish your job back?

A. I do.

MR. CASTIELLO: You may inquire.

CROSS-EXAMINATION.

By MR. CHILDS:

Q. Do you recall on July 18, 1938, at Houston, Captain Rudan, the master of the ship, ordering you and the other twelve members of the crew to go to your stations?

A. Yes, I do.

Q. Did you and the other twelve members of the crew obey his command?

A. No, they haven't.

Q. In other words, you recall several times that day Captain Rudan giving you and the other twelve members of the crew orders to go to your stations?

A. Yes, I do.

Q. And do you recall that you did not obey his orders?

A. I had been working that day, myself.

Q. What?

A. I had been working, myself.

Q. Were you one of those that were sitting down with the other twelve members of the crew?

A. Yes, but I had orders from the ship delegate that it was all right for me to do my work.

Q. Were you working all that day?

A. I was.

Q. Isn't it a fact that you refused to talk to the other members of the crew in the steward's department on that day?

A. No, it is not.

Q. Do you recall that?

A. No.

Q. How many are there in the steward's department?

A. Four, including myself.

Q. That was the steward, the cook and the messman, is that right?

A. That's right.

Q. Did the steward and the cook take part in this refusal to obey orders of the ship's officers?

A. No, they did not.

Q. And isn't it a fact, also, that the messman did not take part in this refusal to obey orders?

A. That is right.

Q. Isn't it a fact that you refused to talk to those men during that day?

A. No, it is not.

MR. CASTIELLO: What would be the materiality of it, if he didn't? I can't see it.

By MR. CHILDS:

Q. Isn't it a fact that you refused to cooperate with those men that I have mentioned on that day?

A. No, it is not.

Q. Now, isn't it a fact that the captain ordered you to serve food to certain other members of the crew?

A. No, it is not.

Q. Let's understand each other. Do you recall when Captain Rudan came on the job about 10:30 o'clock in the morning of July 18th?

A. That's right.

Q. Isn't it a fact that you and twelve other members of the crew were sitting down at that time?

A. That's right.

Q. And isn't it a fact that Captain Rudan gave all of you orders to go to your stations, and that you, among others, did not do so?

A. That's right.

Q. So that what you are referring to in the early part of this cross-examination is that later on, when one of the delegates told you to serve the food, you did so?

A. That is not true. At the time the captain came aboard, I didn't have any work to do.

Q. Aren't you one of the men he told at that time to go to your station?

A. That's right.

Q. Isn't it a fact that you didn't move?

A. I didn't have any work to do, so I couldn't go to any station.

Q. Was that about 10:30 o'clock in the morning?

A. That's right.

Q. What is the nature of your work? What hours do you serve on ship?

A. It is between the hours of six in the morning until about six at night, and there is no special hours.

Q. Just what is the general nature of your duties as a mess boy?

A. To serve the meals, and clean a few cabins.

Q. Do what?

A. Clean a few rooms.

Q. How about washing the eating utensils and so forth?

A. That's right.

Q. And cooking utensils?

A. That's right.

Q. What meals had you already served at 8:30 o'clock in the morning.

A. Breakfast.

Q. How about 10:30?

A. There isn't a meal at that hour.

Q. Had you cleaned up your cooking utensils from the morning meal?

A. I did.

Q. And made up your cabins?

A. No, I hadn't.

Q. What was your general time for making up the cabins during the day?

A. In the morning, after I had finished my dishes, after the breakfast meal, up until the time they served the dinner.

Q. Wouldn't you make up the cabins immediately after you had breakfast?

A. That's right.

Q. Had you made them up that morning?

A. No, I had not.

Q. Didn't the captain speak to you individually, commanding you to go to your station, as well as commanding all the men to go to their stations?

A. He spoke to me in a group when I was with the rest of the crew.

Q. Didn't he also give you an order individually to go to your station?

A. No. He asked me if I refused to go to work. That is the only time he ever talked to me.

Q. What did you say?

A. I said I was on strike with the rest of the crew.

Q. You said you were on strike with the rest of the crew?

A. Yes.

MR. CHILDS: All right. That is all.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. You were a mess boy, you were serving meals?

A. That is right.

Q. You served meals to the striking members of the crew that day, didn't you?

A. That's right.

Q. Is that the kind of work you did during the day?

A. Yes, sir.

MR. CASTIELLO: That is all.

RE-CROSS-EXAMINATION.

By MR. LUSTIG:

Q. Do you recall any other conversation between any of the ship's officers and the crew when they were seated on the poop deck on July 18th, that has not been mentioned here by any of the witnesses?

A. Oh, the chief engineer.

Q. Yes. What is the chief engineer's name?

A. Abe Norton—or rather J. Norton.

Q. Did he come back aft and speak to the crew on the poop deck on that day?

A. He did.

Q. Do you recall what he said?

A. No, I don't.

Q. Do you recall in substance what he said, the general nature of what he said?

A. He was probably asking the men——

MR. CHILDS: I object to the general nature.

By MR. LUSTIG:

Q. If you can recall it in substance. What I mean by that is, without using the very same words, the chief engineer used, if you can tell us what he said, in other words?

A. No, I can't.

Q. You can't?

A. No.

Q. Did you sign on and off these articles on board the ship?

A. I did.

Q. Are they always signed on, on board ship?

A. They are.

Q. And signed off on board the ship?

A. That's right.

Q. As a general rule, you signed on and off at the same time, isn't that correct? You first signed off, and then went to the next table and signed on?

A. Not always. Sometimes they would get off a few days.

Q. When you signed off, and a few days elapsed before you signed on again, you went back and performed work aboard ship?

A. I did.

Q. In the interim, in between time?

A. In the steward's department.

Q. Pardon me?

A. In the steward's department.

Q. And you continued working eight hours a day?

A. Yes.

Q. And you were paid for that?

A. Yes.

Q. Now, if you wanted to leave your ship, how would you do that?

A. Oh, I would finish my work that I had to do, then I would report, tell whoever was in charge.

Q. Before you would sign off, you would notify the person in charge, is that correct?

A. As soon as I signed off.

Q. You would notify your superior?

A. That's right.

Q. And if you didn't notify your superior, he assumed that you were sailing the next trip, is that right?

MR. CHILDS: That is objected to as leading, and repetition, also.

MR. LUSTIG: All right.

TRIAL EXAMINER SEAGLE: Objection sustained.

By MR. LUSTIG:

Q. If you didn't notify your superior, you were leaving, you signed on the next article, is that right?

MR. CHILDS: That is objected to as leading, and repetition.

TRIAL EXAMINER SEAGLE: The objection is sustained.

By MR. LUSTIG:

Q. If your superior did not notify you when you signed off that your services were unsatisfactory, you signed on again, didn't you?

MR. CHILDS: I object to that as leading and irrelevant.

TRIAL EXAMINER SEAGLE: Don't you think the witness has really answered those questions?

MR. LUSTIG: I didn't know whether he had or not.

TRIAL EXAMINER SEAGLE: Is it necessary for you to repeat the same questions put to the witness by Mr. Castiello?

MR. LUSTIG: I just wanted to get it clear.

MR. CASTIELLO: I hope that is no reflection on me.

MR. LUSTIG: No, it is not.

MR. CASTIELLO: Well, I think it is clear.

MR. LUSTIG: All right. That is all.

MR. CASTIELLO: Just one question.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. You testified on cross-examination that when the master came over to the crew, and told them to go to their stations, that they refused; is that correct?

A. They said they were on strike.

Q. Who was the spokesman?

A. Joseph Warren.

Q. Can you remember substantially what his words were to the master?

A. He said we were on strike for union recognition, that is, he wanted the company to recognize the union as the sole bargaining agent for the men on board that ship.

Q. What did the master say?

A. He said he had nothing to do with that.

MR. CASTIELLO: That is all.

RE-CROSS-EXAMINATION.

By MR. CHILDS:

Q. In other words, the master stated he hadn't authority to pass on that question, isn't that right?

A. That's right.

Q. By the way, Mr. Warren spoke for you when he spoke for the crew, didn't he?

A. He spoke for the general membership.

Q. Including yourself?

A. Yes.

MR. CHILDS: That is all.

TRIAL EXAMINER SEAGLE: Any further questions?

MR. CASTIELLO: No further questions.

TRIAL EXAMINER SEAGLE: The witness is excused.

(Witness excused.)

TRIAL EXAMINER SEAGLE: The hearing is adjourned until 9:30 tomorrow morning.

(Whereupon, at 5 o'clock P. M., the hearing was adjourned until 9:30 o'clock A. M., December 6, 1938.)

(Docketed December 13, 1938.)

Room 1432,
Bankers Securities Building,
Philadelphia, Pa.
Tuesday, December 6, 1938.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before WILLIAM SEAGLE, *Trial Examiner.*

Appearances as before.

TRIAL EXAMINER SEAGLE: The hearing will come to order.

MR. CASTIELLO: Mr. McKaig, yesterday, during the proceedings, you stated that you would let us have the company's valuation of the value of the maintenance of these men.

MR. MCKAIG: Yes.

MR. CASTIELLO: Can you tell us what that is?

MR. MCKAIG: We are trying to get that figure. We may not have it today. They are digging it out.

MR. CASTIELLO: Before the proceedings are over?

MR. MCKAIG: Before the proceedings are over.

TRIAL EXAMINER SEAGLE: Will you have it before the end of the day?

MR. MCKAIG: We may.

MR. LUSTIG: May I ask, Mr. McKaig, whether the accountant will be here to testify, or whether you will give his figures?

MR. MCKAIG: We will just give his tabulation on it.

MR. LUSTIG: The value of the maintenance, then, will be based on what it cost the company to feed the men, for example, is that not so?

MR. McKAIG: Yes.

MR. LUSTIG: It will not be the equivalent to what the cost of such maintenance may be on land?

MR. McKAIG: Yes.

MR. LUSTIG: In other words, the company buys its supplies at wholesale prices?

MR. McKAIG: We will agree to a figure of so much per diem.

MR. CASTIELLO: Mr. Pfuhl.

JOHN PFUHL, JR., a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. What is your name?

A. John Pfuhl, Jr.

Q. You are the same John Pfuhl who is named in the complaint?

A. Yes, sir.

MR. McKAIG: How do you spell the name?

THE WITNESS: P-f-u-h-l.

By MR. CASTIELLO:

Q. How old are you?

A. 26.

Q. Are you married?

A. Yes, sir.

Q. Any children?

A. One.

Q. Where do you live?

A. 248 South Church Street, Morristown, New Jersey.

Q. Had you ever been in the employ of the Southern Steamship Company?

A. I have.

Q. When was the last period of continuous service for the company?

A. The last period of continuous service began at November 24, 1937.

Q. And how long did it last?

A. Until July 26, this past year.

Q. This past year?

A. Yes, sir.

Q. You will have to speak up.

MR. MCKAIG: The 26th, did you say?

THE WITNESS: Until July 26th.

By MR. CASTIELLO:

Q. Was that the 26th or the 25th?

A. The 26th. It was the date of the discharge.

Q. In what capacity were you retained?

A. Able seaman.

Q. Now, previous to this last continuous service, were you employed by the company?

A. Yes.

Q. When?

A. It consisted of one trip, which was from July 16th to August 9th.

Q. In what year?

A. 1937.

Q. 1937?

A. Yes, sir.

Q. Now, at the time of your hiring on this one trip, that you have now mentioned, by whom were you hired?

A. By Mr. Sherry.

Q. Mr. Sherry?

A. Yes, sir.

Q. Will you relate to us the conversation you had with Mr. Sherry at this time? Speak up, so everybody can hear you.

MR. MCKAIG: This is the conversation in July, 1937?

MR. CASTIELLO: That is right.

MR. MCKAIG: Mr. Examiner, I object, as too remote to the incidents we are going into here.

TRIAL EXAMINER SEAGLE: What is the purpose of that testimony?

MR. CASTIELLO: The purpose of the testimony is to show the entire union background of the Respondent, on the theory that it sheds light on the events subsequently occurring.

TRIAL EXAMINER SEAGLE: The objection is overruled.

MR. MCKAIG: Exception. It is understood, is it, there is an exception automatically?

TRIAL EXAMINER SEAGLE: Yes, you have, automatically, an exception to my adverse ruling. You will have an exception to this whole line of examination.

THE WITNESS: I went in to Mr. Sherry to see about a job, and he asked me for my papers.

By MR. CASTIELLO:

Q. Was this down at his office?

A. Yes, at his office.

Q. In Philadelphia?

A. At Pier 46.

Q. Yes?

A. And I asked him if there were any jobs. He asked me as to my rating, I said able seaman. He asked me for my papers, which I showed him, and I brought out my certificate of identification.

Q. Now, stop there. You brought out your certification of identification?

A. Yes, sir.

Q. Is that a seaman's certificate of identification?

A. Yes, sir.

Q. And by whom is that issued?

A. That is issued by the shipping commission.

Q. The United States Shipping Commission?

A. The United States Shipping Commission.

Q. And you showed him that?

A. Yes, sir.

Q. Go ahead.

A. And he asked, "Well, what is wrong with the book," meaning the Copeland book.

Q. In order that we may understand just what your next testimony is going to be, what do you mean by the Copeland book?

A. The Copeland book is a book containing continuous discharges for every trip. It shows every trip that has been made and the dates inclusive, and length of service, and in what capacity.

Q. What else does it show?

A. And every trip is marked with the commissioner's seal.

Q. In order that we may further understand this, does the United States shipping commissioner issue both the seaman's certificate of identification and the Copeland book?

A. Yes, sir.

Q. Have you, as a seaman, the option of either a certificate of identification, or a Copeland book?

A. Yes, sir.

Q. And with whom do you exercise that option?

A. At the commisioner's office.

Q. When you are let off after a complete trip, not discharged in the sense of fired, but you are discharged in the sense used customarily in the maritime practice, and you

are in possession of a seaman's certificate of identification, is there any entry made on the seaman's certificate of identification?

A. No, there is not.

Q. Is it just a single sheet of paper?

A. It is, a separate form.

Q. Containing the seaman's picture, is that correct?

A. No, the discharge hasn't.

Q. The certificate contains your picture, does it not?

A. The certificate contains the picture.

Q. When you are discharged, not in the sense of fired, and you hold a certificate, what is given to you, to show that you were signed off?

A. A separate form, issued by the Department of Commerce, known as a discharge.

Q. Known as a discharge paper?

A. A discharge paper.

Q. So that, if you made ten trips, and you hold a seaman's certificate of identification, would you have ten such discharges?

A. Correct.

Q. If you carried the Copeland book—is that in the form of a booklet?

A. It is in the form of a booklet.

Q. And it has your identification also?

A. It has.

Q. And has it your picture in it?

A. It has.

Q. If you made ten trips, in the same manner, would that book contain each one of your discharges?

A. Yes, sir.

Q. Can you tell us whether union men carry certificates of identification or the Copeland book?

A. They carry certificates of identification exclusively.

Q. Can you tell us why that is?

A. Why, whereas the Copeland book shows every trip the seaman has made, it gives a non-union company employer a chance to make a discrimination.

Q. In what manner?

A. Where there will be any strike, there will be a time interval, a date interval in that book, corresponding with the time of the strike.

Q. Yes?

A. Whereas, the seaman's certificate, having a separate paper for each trip, a man can withhold any paper showing any trip that he does not wish to show.

MR. MCKAIG: Mr. Examiner, I again object to this line of examination. The complaint raises certain specific objections, and I do not see what Copeland books and certificates of identification and union preferences with regard to that kind of record keeping have to do with the issue.

TRIAL EXAMINER SEAGLE: The objection is overruled.

By MR. CASTIELLO:

Q. Will you please continue with your conversation with Mr. Sherry after he asked you what is the matter with the book, meaning the Copeland book.

A. I told him, which was the truth at the time, that I had had a certificate before, the old form, which I had to turn in for this new form, I hadn't shipped for a while then, and the old form was out of date, so I had to have them transferred, and I told him I already had a wallet, a convenient form of carrying them, as I had with the old one, and I preferred that for its compactness.

Q. You say you preferred the certificate because it was more compact to carry in your wallet than the Copeland book?

A. Yes, sir.

Q. Go ahead.

A. So, the explanation seemed to be satisfactory at the time.

Q. What did Mr. Sherry then say?

A. He then said, "We don't like any connection with the Union. We don't like any trouble of any kind, and I hope you are not going to make us any trouble, and do your work," and I said, "I will do that."

MR. MCKAIG: You are talking now about a conversation in 1937?

THE WITNESS: Yes, sir, I believe it was.

MR. CASTIELLO: With Mr. Sherry.

MR. MCKAIG: What date in 1937?

THE WITNESS: That was shortly——

MR. CASTIELLO: Just a minute. The witness has testified the conversation took place at the time he was hired in July of 1937.

By MR. CASTIELLO:

Q. Were you, in fact, a member of the Union at this time?

A. No, I was not.

Q. Of any union?

A. No, I was not.

Q. And did you get the job?

A. I did.

Q. You testified you were hired again on this last continuous service which ended on July 26, 1938, is that correct?

A. 1939, I mean.

Q. 1938?

A. 1938?

Q. Yes. This is 1938.

A. Yes, that's right.

Q. At the time you were hired for this service, who hired you?

A. Mr. Sherry.

Q. Was there any talk at this time about the Union?

A. No, there was no talk in connection with the Union.

Q. Were you a member of the Union at this time?

A. Not yet.

Q. Did there come a time when you joined a union?

A. There did.

Q. When was that?

A. That was June 30th.

Q. What year?

A. 1939.

Q. What?

A. This past summer.

Q. 1938?

A. 1938.

Q. Were you present in this hearing room yesterday?

A. I was.

Q. Did you hear the testimony of the witnesses, members of the Union, who preceded you on the stand?

A. I did.

Q. Mr. Tracey, Mr. Smith and Mr. Ferguson?

A. I did.

Q. Is your recollection of what happened during the strike of July 18th, and the reasons therefor, and the reasons for the termination, substantially the same as theirs?

A. Yes.

Q. Do you understand what I mean?

A. I do.

Q. Now, during the sit-down strike of July 18, 1938, on the poop deck of the steamship "City of Fort Worth"—incidentally, you were employed on the "City of Fort Worth," were you not?

A. I was.

Q. As an able-bodied seaman?

A. Yes, sir.

Q. Do you recall what the master, Captain Rudan, had to say, if anything, during this strike, and what was said in turn by the Union?

A. He asked us if there had been anything, well—he asked us what is wrong, asked us if there was any way that

he had not been treating us fairly, and our representative, being the only one that answered him said that there is nothing, that we haven't said he hasn't treated us fairly, and this action was not taken against any officer of the ship, it was strictly against the company, we were striking for union recognition.

Q. What do you understand by union recognition?

A. Union recognition, I understand, is the officials of the union and the officials of the company getting together, to come to an agreement on recognizing the union, the National Maritime Union of America, as the sole bargaining agent.

Q. Do you recall what answer, if any, was given by the members of the Union on strike when the master reminded them of the fact that they were under articles?

A. Yes.

Q. Who spoke for the members?

A. Joe Warren.

Q. What did he say?

A. He said, "We realize we are under articles, but we are alongside the dock of an American port, safely moored, and we are on strike, and we have a right to strike."

Q. Were you a member of the striking crew who, on July 18th, left the ship and went on to the dock, and were approached by one of the shore delegates and told that the strike was over?

A. I was.

Q. What's that?

A. I was.

Q. Can you tell me what the shore delegate had to say?

A. He said, "Well, boys, it is all over; go back to work and everything will be settled by the time you get to Philadelphia, there will be shore delegates on the dock with passes, because they agreed to give them passes, and there will be no one fired for his actions."

Q. Was there anything further said?

A. Not of importance, that I can recall.

Q. Was there anything said about union recognition?

A. They said there will be further discussion between the officials on that, that they will get together.

Q. They will get together on passes?

A. Yes.

Q. And union recognition?

A. Yes, sir.

Q. But what was the agreement as for no discrimination as to anybody who had gone on strike?

A. It was positively stated that there would be no one discharged in discrimination.

Q. Now, it was because of this agreement that the strike terminated?

A. It is the only reason.

Q. And did you sail the ship back to Philadelphia?

A. We did.

Q. When did the ship arrive in Philadelphia?

A. Near noon, on a Monday of July 26th.

Q. Well, Monday, in July, approximately about that time, is the 25th. Do you recall it to be the 25th?

A. I wasn't exactly sure of the day.

Q. All right. When you arrived in Philadelphia, will you tell us whether or not you signed off?

A. We did.

Q. On this question of signing off and signing on, in your experience with the company had you ever had occasion to sign off and then not sign on immediately?

A. Before that, there was one occasion.

TRIAL EXAMINER SEAGLE: Before what?

THE WITNESS: Before the incident in question on July 25th.

By MR. CASTIELLO:

Q. When you signed off?

A. Yes, before that, in my length of service, there had been once, and that was when the ship proceeded to drydock.

Q. Tell us about that.

A. We signed off at the termination of the voyage, and we were not to sign on until the ship went back on its run.

Q. How long after that?

A. That was approximately seven days.

Q. And during that seven days, what did you do?

A. We did the routine ship work.

Q. When you say "we," to whom do you refer?

A. The members of the entire crew.

Q. And you were, of course, paid for that, were you not?

A. We were.

TRIAL EXAMINER SEAGLE: Was that at your regular rate as a seaman?

THE WITNESS: Yes, sir.

By MR. CASTIELLO:

Q. And did you perform your regular tasks on board the ship?

A. We did.

Q. And you stood your regular watches, is that correct?

A. When we were in drydock, we worked eight hours a day straight.

Q. And while you were at sea, you had regular watches?

A. Yes, sir.

Q. On the occasions, the other occasions, when you signed off, did you sign on immediately?

A. Yes, sir.

Q. At the same time that you signed off?

A. Yes, sir.

Q. Were you also given opportunity to sign on, if you desired?

A. Yes, sir.

Q. Now, tell us, in the event that you did not want to sign on again, how would you go about advising the company?

A. When we signed off, and were paid, and before we signed on again, we told the captain that we wished to get off.

Q. And that was all there was to it?

A. That was all.

Q. Will you please tell us about your discharge?

A. After we had signed off, and the Commissioner had not allowed us to sign on——

Q. Just a minute. What do you mean by "had not allowed us to sign on"? Did you have a conversation with him?

A. There was only the papers there for us to sign off, nobody was signing on, and the understanding at the time was, the way I understood it, was that we were to sign on, on sailing day.

Q. From whom did you get that understanding?

A. I don't know exactly; it was just a rumor, before we went into the saloon.

MR. MCKAIG: Mr. Examiner, I move that testimony be stricken out, as to the understanding and rumor, and so forth. It certainly hasn't any place in the evidence, under the widest latitude.

TRIAL EXAMINER SEAGLE: The motion is granted.

By MR. CASTIELLO:

Q. Will you continue, and tell us about the events leading up to your discharge?

A. It really turned out to be a fact, and we didn't sign on.

Q. Yes, we know that.

A. And I asked the Commissioner, "What is this for? Being fired?"

He said, "No, we are just signing on sailing day," that was all there was to it, I collected the money and went out.

TRIAL EXAMINER SEAGLE: Did the Commissioner tell you that?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Do you remember the name of the Commissioner?

THE WITNESS: No, I don't.

By MR. CASTIELLO:

Q. How did you know he was the Commissioner?

A. Or a Deputy Commissioner, I should say.

Q. How did you know he was a Deputy Commissioner?

A. He was one of the usual men that was at the station for signing articles.

Q. Had he signed you off and on previous to that time?

A. Yes, occasionally.

Q. Is that the reason why you are able to say he was the Deputy Commissioner?

A. I am not sure if he is or not, but he seems to be the man that usually is there, one of the men usually there.

Q. Now, will you continue about your discharge?

A. I went aft, and there hadn't been anything said about us being fired, so I went back aft and started to get dressed to go ashore, home.

Q. Why were you going ashore?

A. That is the usual thing, we had a half day off.

Q. At the end of your round trip?

A. Yes. If we came in before 11:30, we were paid off and we had the rest of the day to ourselves, we were allowed to go home until the following morning. And I went aft and started dressing, when we were notified that Warren and myself were wanted up on the poop deck by the mate, Mr. Helland. Warren and I went up.

By MR. CASTIELLO:

Q. Is that John Warren?

A. Joseph Warren. He and I went up, and Joseph Warren talked to the mate, first.

Q. In your presence?

A. In my presence.

Q. Now, speak up, so we can hear you.

A. The mate told Warren words to the effect that he will have to leave him go, and I don't recall his exact words in detail, but the substance of it was that, accordingly, he had had a little misconduct on a trip or two previous. And Warren asked him why he hadn't been fired then.

The mate said he couldn't fire him, because he was under articles, and after that Warren asked if his work was okay, and the mate said his work was okay. So Warren left and the mate turned to me, he said, "John your work has not improved."

I said, "I don't know. I have done my best. I have turned out good work for you to the best of my knowledge", and he said, "Well, I will have to leave you go."

He said, "You are a big, strong man, you should be able to get another job." I told him I never had any trouble getting a job yet; this was the first time I was ever fired, which is the truth. So we shook hands and I left.

Q. Has there ever, at any time in your employ with the Southern Steamship Company, been complaints about your work?

A. Not directly. Once, indirectly, when I first came on board. At that time I had not been at sea for quite a while, and I was, you might say, a little rusty.

Q. What complaint was made to you?

A. It wasn't directly; that I wasn't doing so good. I got up into it again, I feel sure that I was giving them good work.

TRIAL EXAMINER SEAGLE: Was that on your last trip?

THE WITNESS: On my last trip?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: No.

MR. CASTIELLO: No. Let me clear that up.

By MR. CASTIELLO:

Q. When did this complaint about your work take place?

A. The day I was fired.

Q. I understand that, but you testified that once a complaint was made about your work.

A. On the first trip.

Q. On your first trip?

A. Which started November 24th.

Q. What year?

A. 1937.

Q. That trip last approximately twenty-five days?

A. Yes, sir.

Q. Like the rest of them, did it not?

A. Yes, sir.

Q. After that, how many round trips were you signed for?

A. Ten.

Q. Were you ever told about your work not being satisfactory at any other time?

A. No.

Q. After you had signed for these additional ten trips that you speak of, did any one of the officers tell you that your work was not satisfactory?

A. No, sir, they never did.

TRIAL EXAMINER SEAGLE: This is off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: On the record.

Proceed, please.

By MR. CASTIELLO:

Q. You signed for separate trips on each occasion, did you not?

A. That's right.

Q. Is your testimony substantially similar to the other witnesses who preceded you, to the stand, about the strike occurring on July 25, 1938?

A. That is right.

Q. Since the date of your discharge, have you done any work?

A. Yes, sir.

Q. Will you tell us what work you have done?

A. I have worked for the Campbell Soup Company approximately seven weeks.

Q. As what?

A. As a laborer.

Q. How much did you earn?

A. Adding it all together, approximately one hundred forty dollars.

Q. When did you start to work for them?

A. August 10th.

Q. 1938?

A. 1938.

Q. And when was your service concluded?

A. The following month, September 20th.

Q. Were you fired?

A. No, sir, laid off.

Q. Why were you laid off?

A. The termination of the season.

Q. Have you done any other work since that time?

A. Yes, I made one trip with the Atlantic Refining Company, lasting fifteen days.

Q. In what capacity?

A. As A. B.

Q. Was that a permanent job?

A. No.

Q. What kind of a job was it?

A. A relief job.

Q. How much did you earn on that job?

A. Forty-two dollars and fifty cents.

Q. Is that a week?

A. Two weeks, fifteen days.

Q. Can you tell us what a relief job is?

A. A relief job is a man shipped in place of another man that has taken a trip off.

Q. You got keep on this trip also, did you not?

A. Yes, sir.

Q. Can you tell us what your salary was while you were in the employ of the company, the Southern Steamship Company?

A. Seventy-five dollars a month.

Q. That was a month?

A. Yes, and keep.

Q. And keep was in addition?

A. That is understood on any ship.

Q. Do you wish your job back with the Southern Steamship Company?

A. I do.

MR. CASTIELLO: Your witness.

TRIAL EXAMINER SEAGLE: The hearing will recess for a few minutes.

(A recess was taken at this time.)

TRIAL EXAMINER SEAGLE: The hearing will come to order.

MR. MCKAIG: Your colleague wanted to ask a question.

MR. CASTIELLO: I know what the question is.

By MR. CASTIELLO:

Q. At the time you were paid off, were you logged or docked for the action you took in Houston?

A. No. They checked on it, and they found out what it was.

MR. CASTIELLO: That is all.

CROSS-EXAMINATION.

By MR. MCKAIG:

Q. Where were you born?

A. Philadelphia.

Q. Who sent you to Mr. Sherry when you first sought employment?

A. No one. I went there of my own accord.

Q. Is that the customary way of seeking shipping employment?

A. Yes, sir.

Q. Going to the marine superintendent?

A. Yes, sir.

Q. What was the exact date of this application to Mr. Sherry for employment?

A. It was the day before, that would be about July 15th.

Q. July 15th?

A. Yes.

Q. What year?

A. 1937.

Q. And where did you see Mr. Sherry?

A. In his office, on the pier.

Q. Who were present at the time this conversation took place?

A. Mr. Sherry and I.

Q. Anyone else in the office?

A. No, sir.

Q. Wasn't there a stenographer there?

A. I am not sure whether there was or not.

Q. Were you immediately given employment after this application?

A. I was told to report aboard the—yes, I was told to report the following day aboard the S. S. "Wichita Falls."

Q. Who was the master?

A. Captain Weston.

Q. And you were signed on at that time for the voyage to Houston and return?

A. I was.

Q. When did you get back to the port of Philadelphia?

A. About twenty-five days later.

Q. You stated at that time there was a complaint about your work.

A. No, not on that particular trip.

Q. Not on that particular trip?

A. No, sir.

Q. When was this complaint made?

A. On the "City of Fort Worth."

Q. As I understood your testimony, after this first complete trip on the "Wichita Falls," your employment with the Southern Steamship Company ceased?

A. It did.

Q. When did you get a job back again?

A. October 24th.

Q. What year?

A. Same year.

Q. 1937?

A. Yes.

Q. How did you get that job?

A. I was present when the ship was paying off.

Q. How did you happen to be present when the ship was paying off?

A. I knew that would be the date they paid off, and I was there.

Q. How did you know they were going to pay off on this particular date?

A. Well, we find, through the Maritime News, published in the local papers, we find out when the ship is due in, and knowing this other, I knew when they would pay off.

Q. You went down to the ship?

A. Yes, sir.

Q. And went on board the ship?

A. No, we were not allowed aboard ship.

Q. Who did you see?

A. Mr. Sherry.

Q. You went to Mr. Sherry's office again?

A. I was with several other men, and Mr. Sherry came off the ship.

Q. And you made application to Mr. Sherry for re-employment?

A. There was no application involved.

Q. You asked him whether he had a job for you, is that right?

A. I did.

Q. And he signed you on?

A. He did.

Q. For a voyage to Houston and return?

A. I signed that on board the "City of Fort Worth."

Q. This time it was the "City of Fort Worth."

A. Yes, sir.

Q. When did you get back to the port of Philadelphia?

A. The trips were always about the same, about twenty-five days later.

Q. Approximately, when would that be?

A. I don't know, right offhand.

Q. Can't you figure it out?

A. About the 18th or 19th of the following month, December.

Q. About the 18th of December?

A. About that, just roughly speaking.

Q. What year; 1937?

A. Yes, sir.

Q. Who was the master of the "Fort Worth" at the time?

A. Captain Anthony Rudan.

Q. You testified that there was a complaint about your work?

A. Well, it wasn't made directly to me, but I heard about it.

Q. Well, if it wasn't made directly to you, who was it made to?

A. I don't know exactly. It was only hearsay, as far as I know.

Q. Who made the complaint?

A. I don't even know that.

Q. What was the nature of the complaint?

A. That I wasn't doing so good.

Q. Well, can't you be more specific than that?

A. Well, the fact was that I hadn't been to sea for a quite awhile, and there is a different system on every ship you go on, and there was something a little strange to me at first, after being away from the work for a long time, there was some little mistakes I made here and there, and it seemed as though my work wasn't so good.

Q. What kind of work were you supposed to do?

A. General work on deck, chipping, painting and I steered the ship.

Q. How long had you followed the sea?

A. Since 1930.

Q. Since 1930?

A. Yes, sir.

Q. So that you had had about how many years' experience? Seven years, before you got this first ship with the Southern?

A. About that, on and off.

Q. What other steamship lines have you been with?

A. The Atlantic Refining Company, and, from 1930 to 1933 inclusive, I was in the United States Navy.

Q. From 1930 to 1933 in the Navy?

A. Yes, sir.

Q. What ship were you on?

A. U. S. S. "Ogallala" and U. S. S. "Dolphin", "City of Salt Lake City."

Q. Were you honorably discharged?

A. I was.

Q. How long were you with the Atlantic Refining Company?

A. Several trips, three trips, altogether.

Q. Were you a regular man at that time?

A. No, never.

Q. Running extra?

A. Just making relief trips.

Q. What ships were you on?

A. The "Folger."

Q. Who was the master?
A. Captain Johannson.
Q. What other ships?
A. The "Irish."
Q. Who was the master?
A. McCaffrey.
Q. What other ship?
A. And the "Collie," Johannson.
Q. Were you ever arrested?
A. I was, once.
Q. When and where?

MR. LUSTIG: I object to it on the ground it is immaterial, and I move to strike out the question, as to whether he was ever arrested, and the answer thereto.

MR. CASTIELLO: I join in Mr. Lustig's objection.

MR. MCKAIG: It seems to me a fact like that goes to the credibility of the witness.

MR. CASTIELLO: In what respect? He says he was arrested.

TRIAL EXAMINER SEAGLE: Not, it seems to me, what he was arrested for. What do you offer to prove in that respect?

MR. MCKAIG: We are going to show that one of the reasons why there was objection to his work had something to do with this difficulty he had been involved in.

TRIAL EXAMINER SEAGLE: How would the fact of his arrest be related to his work aboard ship?

MR. MCKAIG: Can't you conceive that if one of your employees is being arrested, it might——

TRIAL EXAMINER SEAGLE: What I want to know is what he was arrested for.

MR. MCKAIG: That is what we are going to find out.

TRIAL EXAMINER SEAGLE: It might have been for something trivial, and the charge might have been dismissed.

MR. MCKAIG: We will give him the opportunity to tell us.

MR. CASTIELLO: Will that have relation to his discharge, also?

MR. CHILDS: Yes, certainly.

MR. LUSTIG: I move it be stricken. I, or you, may be arrested for anything.

TRIAL EXAMINER SEAGLE: Would you mind telling me privately what he was arrested for?

MR. CHILDS: Ask him.

TRIAL EXAMINER SEAGLE: You don't know?

MR. CHILDS: I don't know.

TRIAL EXAMINER SEAGLE: Do you say you don't know what he was arrested for?

MR. MCKAIG: I would rather have it come from him.

MR. CASTIELLO: The fact is, you don't know, do you?

TRIAL EXAMINER SEAGLE: If you don't know, it seems to me quite obvious it could not, in any way, be related to the reason for his discharge. If you do know, I will ask you to tell me what you do know about it. I will ask all the spectators to leave the hearing.

MR. CHILDS: May we have a conversation off the record?

TRIAL EXAMINER SEAGLE: Yes, this will be a private conversation.

Off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: For the record.

It appears, from a statement made by Mr. Sherry, in the off-the-record discussion, that the Respondent had knowledge of some inquiries which had been made with reference to the arrest, to which reference is made by counsel for the Respondent, and that these inquiries were made a long time before the witness was hired by the Respondent; in fact, that the witness made several trips for the Respondent after these inquiries were made.

MR. LUSTIG: And of which the Respondent had knowledge.

TRIAL EXAMINER SEAGLE: I have already stated that. Consequently, it seems to me the testimony would be entirely irrelevant to any of the issues in this proceeding.

However, it seems to me it might be proper to ask the witness whether he has ever been convicted of any crime.

MR. CHILDS: With reference to a statement of the Trial Examiner as to the off-the-record discussion with Mr. Sherry, the Respondent is prepared to prove that approximately six or seven months before July 23, 1938, the police authorities of the State of New Jersey made inquiries about this man, alleging that he was implicated in the theft of an automobile. And we propose to show that this is one of the grounds taken into consideration by the Respondent in not re-employing the witness in its service.

TRIAL EXAMINER SEAGLE: In view of the fact that the witness had been re-employed at least several times after the Respondent had this information, the offer of proof is rejected.

MR. MCKAIG: There really is not any offer of proof.

TRIAL EXAMINER SEAGLE: I understood Mr. Childs was making an offer of proof.

MR. CHILDS: May I ask that you read that, Mr. Reporter?

(Last statement by Mr. Childs read by reporter.)

MR. MCKAIG: This is not an offer of proof, because we are not presenting our case at this time.

TRIAL EXAMINER SEAGLE: All right. Let's just say it is a statement by way of explaining the reason for the question. It is not your contention that you received more than this one inquiry some six or seven months before?

MR. SHERRY: May I talk, or Mr. Childs?

TRIAL EXAMINER SEAGLE: I think Mr. Childs may make whatever statement is necessary.

MR. MCKAIG: I would say that at the proper time in the presentation of this proof, we will be prepared to go into the matter fully, but at this time we are not ready to say any more than Mr. Childs has said.

MR. CHILDS: In response to your question, your Honor, Mr. Sherry is not the only one involved in the management of the Respondent's business; but I understand at this moment the information to which I referred is the only information that he has in his possession bearing on the question of the witness' possible implication in a criminal offense.

Of course, when I stated a few moments ago that this was one of the grounds on which he was not reemployed, I am not, at this time, going into the question of other grounds.

TRIAL EXAMINER SEAGLE: I understand that. Will you resume the examination?

By MR. MCKAIG:

Q. Have you ever been convicted of a crime?

A. I don't know whether you would call it convicted or not. I simply was put on probation.

Q. When and where?

A. Around September.

Q. What?

A. It was around September, 1937.

Q. September, 1937?

A. Somewhere around there.

Q. In what place?

A. Mount Holly, New Jersey.

Q. Before what Judge?

A. Henderson or Hendrickson, I am not sure which.

Q. What was the charge against you?

A. I don't know exactly what the charge was.

Q. Are you still on probation?

A. Yes, until September of the coming year.

Q. Whom do you report to?

A. Mrs. Edna—what is her name, now?

TRIAL EXAMINER SEAGLE: Well, I don't see that that is important.

THE WITNESS: The probation officer of Mount Holly.

TRIAL EXAMINER SEAGLE: Don't you know what the charge was against you?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Wasn't there a trial?

THE WITNESS: There was.

TRIAL EXAMINER SEAGLE: Well, now, what were you charged with?

THE WITNESS: Suspended sentence; petty larceny.

TRIAL EXAMINER SEAGLE: Of what?

THE WITNESS: I wasn't accused of stealing any automobile.

TRIAL EXAMINER SEAGLE: What was the charge?

THE WITNESS: Petty larceny, I believe.

TRIAL EXAMINER SEAGLE: Of what? Larceny of what?

THE WITNESS: Of a small amount of scrap iron.

TRIAL EXAMINER SEAGLE: You may continue.

By MR. McKAIG:

Q. Now, Mr. Pfuhl, on this last voyage that you made on the steamship "City of Fort Worth," when did you arrive at the port of Houston?

A. We arrived about the 15th, the 14th or 15th.

Q. Of what month?

A. July.

Q. Of what year?

A. 1938.

TRIAL EXAMINER SEAGLE: Would you mind if I interrupt?

Have you ever been convicted of any other crime?

THE WITNESS: Never.

TRIAL EXAMINER SEAGLE: That is all.

By MR. McKAIG:

Q. What day of the week was it, do you recall?

A. No, I don't.

Q. Do you know what hour of the day it was?

A. I don't even know that.

Q. When did you first leave the ship?

A. Immediately after we were paid off, it was about 6:00 or 6:30 in the afternoon the day we arrived.

Q. Were you paid off at the port of Houston?

A. No, we were not paid off. After we got our draw I proceeded to Houston and mailed some money to my wife.

Q. When did you return to the ship?
A. A few hours later.
Q. When were you supposed to go on duty on the ship?
A. 8 o'clock, the following morning.
Q. And what were your duties?
A. General ship work, whatever that work might be.
Q. And how long were you on duty?
A. Until 5 o'clock in the afternoon.
Q. And then when did you go on duty again?
A. The following morning.
Q. The following morning?
A. Yes.

MR. CASTIELLO: May I interpose at this time, perhaps you can enlighten me on the materiality of your questioning?

MR. MCKAIG: I am going into his movements at Houston, leading up to this so-called sit-down strike, which we term disobedience of orders.

MR. CASTIELLO: I mean, how can his movements before that have any bearing upon the sit-down strike?

MR. MCKAIG: Showing that he was regularly performing his duties until a certain time, and then after he refused to perform his duties.

MR. CASTIELLO: I will stipulate with you that he was correctly performing his duties up to a certain time.

MR. MCKAIG: All right. It is stipulated that the witness regularly performed his duties on the steamship "City of Fort Worth"; until what time?

MR. CASTIELLO: Ask the witness.

By MR. MCKAIG:

Q. When did you first refuse to obey the orders of the ship's officers?

MR. LUSTIG: I object to that, because the witness may not have performed his work.

TRIAL EXAMINER SEAGLE: Just a moment. At this time you are interested in getting when he ceased to perform his duties. Will you ask the witness up until what time he continued to perform his duties?

By MR. McKAIG:

Q. Up until what time did you continue to perform the duties which you were ordered to perform?

A. Until 8 o'clock in the morning of July 18th.

Q. 1938?

A. 1938.

Q. What day of the week was that?

A. Monday morning.

Q. And at 8 o'clock you were supposed to go on general duty?

A. That's right.

Q. And did you refuse to perform that duty?

A. I didn't refuse.

Q. Did you perform the duty?

A. I didn't. We were on strike.

Q. You were ordered to perform certain duties?

A. I was.

Q. And did you obey the order?

A. I couldn't, because I was on strike.

Q. Why couldn't you?

MR. CASTIELLO: I think it is apparent the witness said he was on strike. You are just quibbling on terms now.

MR. McKAIG: It is perfectly apparent he said he was on strike.

MR. LUSTIG: That is why he couldn't.

MR. CASTIELLO: That is why he didn't.

By Mr. McKaig:

Q. In other words, what you have said is that you refused to obey the orders of the officers, and went on strike?

A. No. The strike was decided upon the night before.

Q. But the next morning you were under orders to perform cretain duties, weren't you?

A. Yes, but I was on strike.

Q. And because you were on strike, you didn't perform these duties, isn't that correct?

A. That is right.

Q. What did you do during the course of that morning?

A. Nothing. We sat, as a body, we all sat aft on the poop deck.

Q. How many of you were there?

A. Thirteen of us, approximately.

Q. When did a ship's officer first approach your group?

A. Shortly after 8 o'clock, as near as I can recall.

Q. Who was the officer?

A. Mr. Helland.

Q. What did he say?

A. He asked us, "What seems to be the matter here, boys? Aren't you going to go to work?" And we told him —not we, but Mr. Warren spoke for us, our representative, I think it was our representative, that we were on strike.

Q. This conversation was entirely between Warren and the first officer, Helland, is that right?

A. That's right.

Q. Mr. Helland ordered you to perform your duties?

A. He did.

Q. Collectively and individually?

A. He did.

Q. And you all refused?

A. We refused on the ground we were on strike.

Q. Did Mr. Helland go away then?

A. As near as I can recall, he did, after a little conversation that is not important.

Q. What other officers approached you?

A. At various times there were the captain, the chief engineer, the third assistant engineer, Mr. Schreider.

Q. Who is Mr. Schreider?

A. I understand he was the company's representative at Houston.

Q. And all these officers who approached you ordered the group to go to work?

A. Yes, sir.

Q. And they also refused, on the ground they were on strike?

A. That is correct.

Q. When did you first see the captain that time?

A. Oh, it was around the time between ten and eleven.

Q. At this conversation between the captain and your group of men, were anyone else present besides the captain?

A. I am not sure who all was there. I don't recall exactly.

Q. Was Mr. Schreider there at the time the captain was talking to you?

A. I believe he was.

Q. Did you continue to stay there on the poop deck all day long?

A. We did.

Q. I believe you testified on direct examination that sometime during the course of the day you left the ship and went down on the dock, is that right?

A. Yes, we were called by our own representative.

Q. Were you talking to your representatives during the course of the day?

A. We were.

Q. They were on the dock?

A. No, they were the shore delegates of the union they were talking to.

Q. Shore delegates of the union were on the dock, is that right?

A. That's right.

Q. Alongside the ship?

A. Alongside the ship.

Q. And your group was up on deck, and you were talking to them standing below?

A. Correct.

Q. Who were the shore delegates?

A. Mr. Jarvis and Mr. Cunningham.

Q. Were they there all day long, or only at intervals?

A. Yes, sir; at least one was always there.

Q. At least one was always there?

A. That's right.

Q. What time was it when you left the ship and went down on the dock?

A. I don't know exactly. It was around 6:00 or 6:30, 7:00 o'clock, somewhere around between 6 and 7.

Q. In the afternoon?

A. That's right.

Q. Who told you to leave the ship?

A. Mr. Warren. He had been called down first by the shore delegate.

Q. He had gone down first, had he?

A. That's right. He had been called by the shore delegate.

Q. Yes?

A. To come to where the captain was standing.

Q. Was the captain down on the dock, too?

A. He was at the dock.

Q. And then you were called to come down?

A. After they had had a conference at which I don't know exactly what transpired.

Q. There was a conference on the dock in which you did not participate?

A. That's right. As a body we didn't, except Joe Warren and the two shore delegates, representatives, Mr. Jarvis and Mr. Cunningham, and the captain and Mr. Schreider, I believe.

Q. But you took no part in that conversation?

A. No, none of us did, only the parties mentioned.

Q. So you don't know what went on down there?

A. I don't know what went on down there.

MR. MCKAIG: Nothing further.

CROSS-EXAMINATION.

By MR. LUSTIG:

Q. The ship reached Philadelphia on July 25, 1938?

A. Yes, sir, in the morning.

Q. And was there a meeting of the union members on board the ship on the day previous?

A. There had been.

Q. Will you tell us what occurred at that union meeting, if anything?

A. The substance of the meeting was to decide what actions we were to take should there be any members of our body fired, due to our course of action.

Q. Fired because of your actions?

A. Yes, in Houston.

Q. What, if anything, was decided at that meeting?

A. We were to strike, and in the event that anyone was fired, we were all——

TRIAL EXAMINER SEAGLE: Just a moment. Mr. Lustig, at least four witnesses have testified to what happened at that meeting. I don't think we would be justified in spending any more time on it.

MR. LUSTIG: I am through with it.

TRIAL EXAMINER SEAGLE: You are through, you say?

MR. LUSTIG: I am, as far as that line of questioning is concerned.

By MR. LUSTIG:

Q. On July 25, 1937, after you were discharged or fired by the Respondent, what action, if any, was taken by the other union members?

A. We stayed aboard and struck, according to what we had decided on in the meeting.

Q. In other words, those union members who were not fired went on strike?

A. That's right.

MR. LUSTIG: That is all.

TRIAL EXAMINER SEAGLE: About that, too, there had already been a good deal of testimony.

MR. MCKAIG: May I ask one further question?

TRIAL EXAMINER SEAGLE: Yes.

CROSS-EXAMINATION (Continued).

By MR. MCKAIG:

Q. You testified that since you have not been with the Southern Steamship Company, you made a trip on an Atlantic tanker?

A. That's right.

Q. What tanker was that?

A. "R. H. Collie."

Q. And who was the master?

A. Captain Johannson.

Q. What were you paid?

A. You mean the exact amount?

Q. Yes.

A. Or at what rate?

Q. Yes, what were your wages?

A. My rate of pay was eighty-five dollars a month.

Q. Able seaman?

A. Able seaman.

Q. That is in the tank service?

A. That's right.

Q. The tank ship service?

A. That's right.

TRIAL EXAMINER SEAGLE: Is that all?

MR. MCKAIG: That is all.

TRIAL EXAMINER SEAGLE: Did you say you have been put on probation for a period of a year?

THE WITNESS: Two years.

TRIAL EXAMINER SEAGLE: Under the terms of your probation, would you be permitted to take a job on a ship?

THE WITNESS: Yes, that is my occupation, as seaman, and under those circumstances they did not wish to prevent me from making a living, so that had been arranged for, that I was to contact them by mail.

TRIAL EXAMINER SEAGLE: In other words, it has been definitely arranged that you may seek employment as a sailor?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: You are not prohibited from leaving the country?

THE WITNESS: No, I am not.

TRIAL EXAMINER SEAGLE: That is all.

(Witness excused.)

MR. CASTIELLO: Mr. Burns.

WILLIAM GODFREY BURNS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Will you state your full name, please?

A. William Godfrey Burns.

Q. Where do you live, Mr. Burns?

A. 864 North 19th Street, Philadelphia, Pa.

Q. How old are you, Mr. Burns?

A. 24 years.

Q. Have you ever worked for the Southern Steamship Company?

A. I have.

Q. When did you first get employment there?

A. In 1937, I don't know the exact date. That was aboard the "City of Dallas." I worked there for about three months as mess man. Then, later on, in May, 1938, I worked there again aboard the "City of Fort Worth" until July 25th.

Q. 1938?

A. That is right.

Q. That was continuous service that you had from May, 1937 to July?

A. No, sir.

Q. Excuse me. Go ahead.

A. It was from towards the beginning of May until July 25th that I had continuous service, in 1938.

Q. That is what I understood, that's what I said, about from the beginning of May, 1938 to July 25th, you had continuous service.

A. That's right.

Q. In what capacity?

A. As an ordinary seaman

Q. What was your salary?

A. Fifty-seven dollars and fifty cents a month.

Q. And keep, in addition?

A. And keep, in addition.

Q. And what boat were you employed on in this last service?

A. The "City of Fort Worth."

Q. Are you a member of the union?

A. Yes, I am a member of the N. M. U.

Q. When did you join?

A. June 30, 1938.

Q. Did anybody solicit you to join the union? Did anyone ask you to join?

A. I did know a few fellows that had been already members, and I talked to them—John Tracey was one—and I joined up with the group.

Q. You have heard the testimony here of the witnesses that preceded you to the stand relative to the meeting of July 17th, 1938, where the strike to take place the next day was discussed, and the reasons. And you heard the testimony about the strike of July 18, 1938, and you heard the testimony about the union meeting aboard the ship, and the other testimony relative to these matters by the other witnesses. You have heard all that testimony?

A. Yes, I have.

Q. Is your testimony substantially the same as theirs?

A. Yes, it is.

Q. Now, when the "City of Fort Worth" arrived at Philadelphia July 25, 1938, did you learn about the discharges of any persons?

A. I did, when they paid off.

Q. And about whose discharges did you learn?

A. I learned of the members that were fired, Joseph Warren and Elmer Fergusen, John Tracey, Edward Smith.

Q. And Mr. Pfuhl?

A. That's right; John Pfuhl.

Q. Did the other members of the union also learn of their discharges?

A. They did.

Q. When you learned of those, did you speak to any of the officers of the ship?

A. I did ask the chief mate.

Q. Who is he?

A. Mr. Helland.

Q. What did you ask him?

A. When I heard that John Pfuhl and Joseph Warren, two A. B.'s, were fired, I had gone up there myself, expecting the same thing, and I asked him if he wanted to see me. He replied no, that he didn't have anything he wanted to see me about.

Q. Then what did you do?

A. I went back to the forecastle then.

Q. Did you see anybody else back at the forecastle?

A. I saw most of the other members who were aboard.

Q. What course of action, if any, was decided upon?

A. It was decided that we would do as we had agreed at the meeting of the 24th, that we would all go on strike, in protest against the discrimination shown.

Q. Did you go on strike?

A. We did.

Q. Are you still on strike?

A. We are.

Q. Have you ever asked the company for your job?

A. I have not.

Q. If these men whom you have named who were discharged, were taken back by the company, and the reasons for your strike were settled, would the strike be called off?

A. It would.

MR. MCKAIG: I move to strike that out.

MR. CASTIELLO: On what grounds?

MR. MCKAIG: You are asking him to state a conclusion. You have already asked him whether or not he applied for his job back. He said he didn't.

TRIAL EXAMINER SEAGLE: The motion is granted.

MR. CASTIELLO: Exception.

By MR. CASTIELLO:

Q. How much money have you earned since the time you went on strike?

A. I haven't earned any.

Q. You haven't earned any?

A. No, I haven't.

Q. Have you attempted to secure other employment?

A. Yes. I am on the union shipping list, it is a rotary list.

Q. Do you know whether or not the other strikers also have their names placed on that rotary list?

A. Yes, the majority of them have.

MR. MCKAIG: What list do you call that?

THE WITNESS: That is a rotary system they have there.

By MR. CASTIELLO:

Q. That is the list that is maintained by the N. M. U., is that right?

A. Yes, that's right.

Q. At the union hall in Philadelphia?

A. That is right.

Q. Were you logged for any time you took off during the strike of July 18th?

A. I was not.

Q. Did anybody ever give you any indication why these five men were discharged, and you other eight men were not?

A. No, no one did.

Q. Do we understand one another, that logging means being docked for pay?

A. That's right.

Q. Do you wish to go back to work?

A. I do.

MR. CASTIELLO: You may inquire.

MR. MCKAIG: Are you through with him?

MR. CASTIELLO: Yes.

CROSS-EXAMINATION.

By MR. MCKAIG:

Q. Were you in the group on the poop deck in the port of Houston the day that has been talked about here?

A. Are you referring to the 18th of July?

Q. July 18th, I think, that's right.

A. That's right.

Q. Were you in the group on the poop deck?

A. I was.

Q. Did you hear the orders of the captain and the other officers, telling you to go to your stations?

A. I did.

Q. And you failed to go, is that correct?

A. We told him we were on strike.

Q. But you failed to go to your stations, is that correct?

A. I didn't go to any station.

Q. What?

A. I didn't go to any station, that's right.

Q. You failed to go. You did not participate in any of these conferences on the dock, did you?

A. No.

Q. You don't know what happened out on the dock?

A. We had a spokesman for that.

Q. But I mean you were not there, so you don't know what happened?

A. Why, no.

MR. MCKAIG: Nothing further.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. You were on the poop deck with the other eight strikers who were not discharged, were you not?

A. That's right.

Q. Did you refuse to obey the commands of the master, just like the other fellows who were discharged and who refused to the same degree?

A. Why, no one exactly refused.

Q. Here is what I am driving at: The captain asked all of you to go back to work?

A. That's right.

Q. You fellows who were not discharged took the same action as the fellows who were discharged, didn't you?

A. That's right.

MR. CASTIELLO: That is all.

RE-CROSS-EXAMINATION.

By MR. LUSTIG:

Q. Under what circumstances would you return to work for the Southern Steamship Company?

A. If the entire group of union men that walked off the ship, and those that have been fired, are reinstated.

MR. LUSTIG: That is all.

TRIAL EXAMINER SEAGLE: Do you intend to call each one of the employees who went out on strike?

MR. CASTIELLO: I attempted, in an off-the-record discussion with counsel for the Respondent, to get him to stipulate with me that in the event the other strikers are called, they would testify in the same manner.

The testimony will be merely cumulative, and, in my opinion, would serve no purpose. I think the record sufficiently shows who the strikers were, that they all took the same action, that they all went on strike after the discharges.

That is the extent of their testimony, also. I have nothing further to add by way of additional facts.

TRIAL EXAMINER SEAGLE: Then your answer is you don't intend to call any of the others?

MR. CASTIELLO: I don't think it would serve any purpose.

TRIAL EXAMINER SEAGLE: Perhaps, Mr. Childs would be in a position to enlighten me as to whether the other men did, in fact, quit on July 25th?

MR. CASTIELLO: 1938.

MR. CHILDS: That is correct. There are seven men in addition to the witness who quit.

TRIAL EXAMINER SEAGLE: And have not worked for the company since?

MR. CHILDS: And have not worked for the company since. There is one exception; and that is that there is a man named Crassovaz who was reemployed.

Could we have a discussion off the record a moment here?

TRIAL EXAMINER SEAGLE: Yes.

This is off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: On the record.

It appears from the off-the-record discussion that one of the thirteen men mentioned by Mr. Tracey as having gone out on strike on July 25, actually did not do so; that he remained with the ship. In other words, there would be a total of five who were discharged and seven who did go out on strike.

The man I refer to was Alex Braun.

Now, did I understand you to say that another member of the crew, by the name of Crassovaz, has been reemployed?

MR. CHILDS: That is correct.

TRIAL EXAMINER SEAGLE: Since the strike?

MR. CHILDS: Yes, sir.

TRIAL EXAMINER SEAGLE: Will you state for the record when he was reemployed?

MR. SHERRY: On the trip after; that would be three to four weeks after he had left the boat. He was just off one trip.

TRIAL EXAMINER SEAGLE: Did he voluntarily apply for reemployment?

MR. SHERRY: Yes.

TRIAL EXAMINER SEAGLE: Or did you call him back?

MR. SHERRY: He really would have gone out, I guess, if the thing was straightened out that particular trip, but we were a little late in getting under way, we had had somebody employed at that time, so the following trip we took him on again.

TRIAL EXAMINER SEAGLE: Did he apply on that occasion?

MR. SHERRY: Yes.

TRIAL EXAMINER SEAGLE: When you did take him on again?

MR. SHERRY: Yes, he applied.

TRIAL EXAMINER SEAGLE: I mean, you didn't send for him?

MR. SHERRY: No. He applied.

TRIAL EXAMINER SEAGLE: Will it be stipulated by counsel that all the statements made by Mr. Childs and Mr. Sherry be taken as stipulations of fact in the record?

MR. CASTIELLO: It is agreeable to me.

MR. MCKAIG: Yes.

TRIAL EXAMINER SEAGLE: Very well. It is so stipulated.

MR. LUSTIG: It is so stipulated by counsel for the Union.

MR. MCKAIG: Then you have closed your case?

MR. LUSTIG: Well, now, I don't want to call every one of these witnesses. Why can't we stipulate that if we call the balance of the men that went out on strike, they would testify substantially the same as the witness here?

That will not bind you as to the truth of what they would testify to, it would just save time.

TRIAL EXAMINER SEAGLE: Well, it has already been stipulated.

MR. CASTIELLO: Yes, that is what I understood.

TRIAL EXAMINER SEAGLE: That they went on a strike. That is all that is relevant.

MR. CHILDS: In order not to have any misunderstanding as to the Respondent's position, we take the position it was not a strike, but a voluntary quitting of employment.

TRIAL EXAMINER SEAGLE: Well, let us say they quit their employment, as you understand it; and that they went on strike, as the union understands it.

However, the point is they did not work after July 25th.

MR. CHILDS: That is right.

TRIAL EXAMINER SEAGLE: And I suppose it is also understood that they would not work after that for the reason that these five men had been discharged?

MR. MCKAIG: Well, that might be their reason.

TRIAL EXAMINER SEAGLE: Well, I say, it was their reason.

MR. CASTIELLO: Of course.

TRIAL EXAMINER SEAGLE: I don't say that you think the reason was a good one, or was a justifiable one; but that was the reason why they wouldn't work after July 25th.

MR. CHILDS: Just a moment. In order to clear the record, our suggestion is that we adopt the suggestion made by counsel for the union, and that is, simply that

it is stipulated between all the parties that the other six witnesses——

TRIAL EXAMINER SEAGLE: You mean apart from the witness now on the stand?

MR. CHILDS (continuing): —that the other witnesses who ceased to work after July 25, 1938, would, if called to testify, testify in substantially the same way as the witness, Godfrey Burns.

MR. CASTIELLO: That is agreeable to counsel for the Board.

TRIAL EXAMINER SEAGLE: Do you also stipulate?

MR. LUSTIG: Yes.

TRIAL EXAMINER SEAGLE: It is so stipulated.
Do you have any further testimony?

MR. CASTIELLO: I have not any further testimony, Mr. Examiner.

MR. LUSTIG: At the present time?

TRIAL EXAMINER SEAGLE: At the present time, of course.

MR. CASTIELLO: Of course, at the present time.

TRIAL EXAMINER SEAGLE: I understand, you explained to me yesterday, that you have other witnesses who are, however, not available at the present time?

MR. CASTIELLO: Yes.

MR. CHILDS: You have the witness, Warren, is that right, who is at sea?

MR. LUSTIG: That is right, Joseph Warren.

MR. CHILDS: And these fellows to be taken by deposition?

TRIAL EXAMINER SEAGLE: Yes. There are also, as I understand it, witnesses whose testimony the Board wishes to have taken by deposition.

As you explained to me yesterday, you also have some witnesses whose testimony you wish to be taken in the same manner.

MR. MCKAIG: Warren is the only other witness to appear before the Examiner?

MR. CASTIELLO: That is correct.

MR. LUSTIG: He will be in the city of Philadelphia, I understand, on the 13th of December, 1938.

TRIAL EXAMINER SEAGLE: As a matter of fact, it has not been definitely agreed yet as to how the testimony of these other witnesses is to be taken. I don't want it to appear in the record that there has been a definite understanding or commitment.

MR. MCKAIG: This particular man is going to appear before you in person.

TRIAL EXAMINER SEAGLE: It is even possible the others might appear before me, too. I am not in a position, at the present moment, to make any definite statement about that.

In other words, we have not yet worked out the manner in which the testimony of the witnesses who are in Houston, Texas, will be taken. For the present, subject to the understanding which I have stated, the Board's attorney rests.

Now, are you ready to proceed?

MR. MCKAIG: No, we are not ready to proceed. We have filed a motion for a continuance, and while, as I understood it, that motion was not granted, it was with the understanding that we would now ask that you continue the hearing until December 20th, when we expect the "City of Fort Worth" to be in port, in the port of Philadelphia, again, and our witnesses who would appear before you in person would be available at that time.

TRIAL EXAMINER SEAGLE: My understanding was that you would be prepared to call some witnesses, Mr. Sherry, in particular, who is present.

MR. MCKAIG: Today?

TRIAL EXAMINER SEAGLE: That you would call him when the Board's case was rested.

MR. CHILDS: It was our understanding that the only question to which we were to respond today was the matter of fixing the item of keep on the ships; because, in our application made to the Regional Director, we ask that the Respondent's testimony commence on December 20th, when the witnesses on the ship would be again in port.

TRIAL EXAMINER SEAGLE: Well, I did not so understand you yesterday. My understanding yesterday was that you would call Mr. Sherry.

MR. MCKAIG: There really isn't much we could call him for.

TRIAL EXAMINER SEAGLE: You do intend to call Mr. Sherry, don't you?

MR. CHILDS: We do intend to call Mr. Sherry, but we had, in this motion, asked that the opening of the Respondent's case be postponed until the 20th of December, because at that time we expected to put on our whole case, including the testimony of Mr. Sherry, and I respectfully submit that, as a matter of order of proof, it would be more satisfactory if the Respondent could open its case on December 20th, and go right on with its witnesses to the close.

MR. CASTIELLO: May I state my position?

TRIAL EXAMINER SEAGLE: Yes.

MR. CASTIELLO: It was my understanding when this motion was filed that the only reason for filing the mo-

tion asking for the continuance was because of the absence of certain officers who were aboard the "Fort Worth", and not expected back until probably December 20, 1938.

From that, I did not gather that the Respondent would open its whole case on the 20th. I had hoped that, perhaps, we might have the testimony of at least some of the Respondent's other witnesses, who were available, at the end of the Board's case. Perhaps, we misunderstood.

MR. CHILDS: I may say, your Honor, that counsel for the Board told me, and I think he will recall it, that he expected it would take two or three days to put on his case, and, in reliance upon that, I assumed, and also in view of the application made for the commencement of this testimony on December 20th, I assumed that the Board's case would close today, subject to the testimony of the witnesses, and that we could go on the 20th.

TRIAL EXAMINER SEAGLE: How many of your witnesses are available in Philadelphia?

MR. CHILDS: I believe, your Honor, subject to further conference with Mr. Sherry, that the only witness available for the Respondent at Philadelphia at this time is Mr. Sherry, and I am not prepared to put him on the stand, and I think the Respondent's case would be more adequately presented if these officers of the ship went on with the Respondent's case on December 20th, and if Mr. Sherry also at that time took the stand.

MR. CASTIELLO: I would have no serious objection to the outline of your case as you have now presented it to the Trial Examiner.

However, I want it understood that if you have other witnesses available in Philadelphia presently, that they should be called now, and, if it is just Mr. Sherry,

then I will not have any objection to the entire Respondent's case starting on the 20th.

MR. LUSTIG: I would much prefer to go on now, Mr. Trial Examiner.

TRIAL EXAMINER SEAGLE: When I asked you whether you were prepared to go on now I did not mean that literally, and right now. Couldn't you go on sometime later in the afternoon, say 2:00 or 2:30?

MR. MCKAIG: It would really conduce to the orderly presentation of our case if we could go ahead on the 20th. After all, Mr. Sherry is a comparatively unimportant witness in this case.

TRIAL EXAMINER SEAGLE: If Mr. Sherry is the only witness whom you would be prepared to call in the present stage of the hearing, I am inclined to agree that we might just as well postpone the testimony until the other officers are available; but if there are a number of witnesses whom you would call, I think they ought to be called now while they are here.

You know, these men who are in the shipping industry are here one day, and somewhere else another.

MR. CHILDS: No. Your Honor's understanding is substantially correct, it is entirely correct in this, that Respondent's counsel do not now have in mind calling any other witness, who is now in Philadelphia, except Mr. Sherry.

TRIAL EXAMINER SEAGLE: In that case, I think the testimony of Mr. Sherry had, perhaps, better be taken together with that of the officers of the ship.

I would like to see what arrangements can be made to take the testimony of certain of the other witnesses by deposition.

I shall consequently recess the hearing until one o'clock. In the meantime, we can all get some lunch,

and when we reconvene I think I will be in a better position to outline the procedure which should be followed.

MR. CASTIELLO: Of course, we will have this in mind also: In the event you grant the motion to reconvene on the 20th, that, on the 20th and continuously thereafter, all Respondent's witnesses will be present.

TRAIL EXAMINER SEAGLE: I think, off the record, I made such a statement to Mr. Childs yesterday.

MR. CHILDS: Yes, sir.

TRIAL EXAMINER SEAGLE: That it would be understood that if the hearing adjourned until the 20th, counsel would undertake to keep his witnesses here until we have finished with them.

MR. CHILDS: Yes.

MR. MCKAIG: We also hope to have the depositions by that time, so that we can have everything cleaned up. The only other part is to hear Warren on the 13th.

TRIAL EXAMINER SEAGLE: Wouldn't it be just as well to hear Warren on the 20th, too?

MR. CASTIELLO: He will be here only on the 13th for a very quick turn-around. He is here one moment and out the next.

TRIAL EXAMINER SEAGLE: I am afraid, then, we will have to hear him on the 13th.

MR. CHILDS: May this be off the record?

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: The hearing is adjourned to 1 o'clock p. m.

(Whereupon, at 12 o'clock noon, a recess was taken until 1 o'clock p. m.)

AFTER RECESS.

(Whereupon, the hearing was resumed, pursuant to recess, at 1 o'clock p. m.)

TRIAL EXAMINER SEAGLE: The hearing will come to order.

Off the record.

(Discussion off the record.)

TRIAL EXAMINER SEAGLE: This is on the record.

After considering the matter, I have come to the conclusion that the best thing to do for the present would simply be to adjourn the hearing until next Tuesday, in order to take the testimony of this man Warren.

After we have had his testimony, we shall probably take the testimony of the Respondent's witnesses on the 20th, and if, after that, it appears that we still want to take the testimony of these witnesses in Houston, Texas, we can make arrangements at that time.

MR. MCKAIG: Very well.

TRIAL EXAMINER SEAGLE: At the present time I am adjourning the hearing until 10 a. m., Tuesday morning, December 13, 1938.

(Whereupon, at 1:03 p. m., December 6, 1938, the hearing was adjourned until 10 a. m., Tuesday, December 13, 1938.)

(Docketed December 23, 1938.)

CERTIFICATE

THIS IS TO CERTIFY THAT THE ATTACHED PROCEEDINGS, BEFORE THE NATIONAL LABOR RELATIONS BOARD, FOR THE SECOND REGION, IN THE MATTER OF

IV-C-541

SOUTHERN STEAMSHIP COMPANY

and

NATIONAL MARITIME UNION OF AMERICA,
(Affiliated with the C. I. O.)

PHILADELPHIA, PENNSYLVANIA. DECEMBER 14, 1938.

WERE HAD AS HEREIN APPEARS, AND THAT THIS IS THE ORIGINAL OF THE TRANSCRIPT FOR THE FILES OF THE BOARD.

DANIEL W. ROSS, Official Reporter.
By M. L. SPECK.

Room 1432, Bankers Securities Building,
Philadelphia, Pennsylvania,
Wednesday, December 14, 1938.

The above-entitled matter came on for hearing, pursuant to adjournment, at 2 o'clock p. m.

Before: WILLIAM SEAGLE, *Trial Examiner.*

Appearances as before.

PROCEEDINGS.

TRIAL EXAMINER SEAGLE: The hearing will come to order.

MR. CASTIELLO: Mr. Examiner, as the record shows, at our last meeting the case was continued until 10:00

a. m., December 13th, 1938, at this same meeting place in the Board's offices at 1432 Bankers Securities Building, Philadelphia.

The purpose of our meeting was to take the testimony of one of the Board's witnesses, Joseph Warren. By agreement and consent of all parties, yesterday the hearing was continued until today, December 14th, at 2:00 p. m., because of the unavailability of the witness at that time.

That is correct, is it not, Mr. Childs?

MR. CHILDS: It is.

MR. CASTIELLO: And Mr. Dorfman?

MR. DORFMAN: Yes.

MR. CASTIELLO: And you gentlemen agreed that was the agreement.

MR. DORFMAN: Yes.

MR. CHILDS: That is correct.

MR. CASTIELLO: The situation today, I believe, would be better presented by Mr. Dorfman, of counsel for the Union.

MR. DORFMAN: Mr. Warren was engaged as a third mate aboard the "Gulf Dawn," a vessel operated by the Gulf Refining Company. The vessel docked at 9:00 a. m. this morning. The sea watches were broken at noontime. It was then that we learned for the first time that, for some reason or other, Mr. Warren had left the vessel at Port Arthur, Texas, and I immediately communicated with the Regional Office and informed them of that fact.

I now ask that the testimony of Mr. Warren be taken at such future time prior to the termination of these proceedings as we shall be able to produce him. I believe that when the testimony of the other wit-

nesses is taken in Houston that Mr. Warren will be made avialable by the Union at that time.

TRIAL EXAMINER SEAGLE: I don't suppose it is necessary for me to state definitely now that I shall grant that request.

MR. DORFMAN: I don't think so.

TRIAL EXAMINER SEAGLE: It may be that before the taking of the testimony of the other witnesses is over, you may have changed your mind about the desirability of calling him. For the present, your request will, therefore, be merely noted for the record.

MR. CASTIELLO: I want to apologize to all parties, Mr. Examiner, if apology is needed, for having you all come up here, but of course, I was not informed until such a time that it was impossible for me to notify the parties not to be here.

TRIAL EXAMINER SEAGLE: I understand that.

Mr. Childs, will you be ready to proceed next Tuesday?

MR. CHILDS: Yes, sir.

TRIAL EXAMINER SEAGLE: Will you be ready to proceed in the morning? I mean, when do you expect the ship to come in?

MR. CHILDS: The ship is due, as I understand it, sometime Monday night, the 19th of December, but in view of the desirability of having the Respondent's case open with the testimony of the witnesses on board the steamship, it might be well to fix the hearing for 10:00 o'clock on the morning of Wednesday, December 21st, and I therefore respectfully request that the hearing be continued to that time.

MR. CASTIELLO: The Board has no objection, Mr. Examiner.

MR. DORFMAN: Nor has the Union any objection.

TRIAL EXAMINER SEAGLE: I understand you are making that request because you are not certain the vessel will arrive before midnight of Tuesday, is that correct?

MR. DORFMAN: No, Monday, the 19th.

TRIAL EXAMINER SEAGLE: Sometime Monday night?

MR. DORFMAN: Yes.

TRIAL EXAMINER SEAGLE: But there may be a delay?

MR. CHILDS: There may be a delay, and, in addition to that, I would respectfully suggest that I would like to have an opportunity to confer with my witnesses before they take the stand.

TRIAL EXAMINER SEAGLE: Very well. I shall adjourn the hearing until Wednesday, in accordance with your request, but, before doing so, in order that this session may not have been entirely in vain, perhaps I should rule on a motion as to which I reserved decision during the last session.

I believe you moved to strike from the record, Mr. Childs, a certain portion of the testimony of the Witness Palazzi, in which he gave his reason for not informing the telephone operator in Mr. Sherry's office as to his real reason for calling him.

That motion is denied.

The hearing is adjourned to 10:00 a. m., Wednesday morning, December 21, 1938.

(Whereupon, at 2:15 o'clock p. m., Wednesday, December 14th, 1938, the hearing was adjourned to 10:00 o'clock a. m., Wednesday, December 21st, 1938.)

(Docketed December 29, 1938.)

Room 1432, Bankers Securities Building,
Walnut and Juniper Streets,
Philadelphia, Pennsylvania,
Wednesday, December 21st, 1938.

The above-entitled matter came on for hearing, pursuant to adjournment, at 10:00 o'clock a. m.

Before: WILLIAM SEAGLE, *Trial Examiner.*

Appearances as before.

PROCEEDINGS.

TRIAL EXAMINER SEAGLE: The hearing will come to order. Are you ready to proceed now, Mr. Childs?

MR. CHILDS: Yes, sir. And I now move to renew my motion, on behalf of the Respondent, Southern Steamship Company, for the dismissal of the complaint on the ground that the complaint is insufficient, and on the further ground that the evidence of the Board is not sufficient to sustain the allegations of the complaint.

TRIAL EXAMINER SEAGLE: Under the peculiar circumstances of this case, I hardly see how I can possibly rule on that motion. The Board's case, as a matter of fact, has not been completed. As you well know, the Board still intends to call several witnesses. The motion certainly would seem to be premature.

MR. CHILDS: I then ask leave to renew the motion at the conclusion of the Board's case.

TRIAL EXAMINER SEAGLE: You may, of course, renew the motion when all the Board's witnesses have been heard.

MR. CHILDS: Mr. Helland.

ODD HELLAND, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CHILDS:

Q. Will you state your full name?

A. Odd Helland.

Q. Will you spell it for the record?

A. O-d-d H-e-l-l-a-n-d.

Q. Where do you live?

A. 866 North Twenty-first Street.

Q. City of Philadelphia?

A. Philadelphia.

Q. What licenses do you hold?

A. Master of Oceans.

Q. How long have you held the Master's license?

A. Since 1929.

Q. What is your position on the steamship "City of Fort Worth"?

A. Chief Mate.

Q. And how long have you held that position?

A. Since January 9, 1939.

By MR. MCKAIG:

Q. What year?

A. 1938. Pardon me.

By MR. CHILDS:

Q. Had you been on the ship before that time?

A. About eight years ago I was on it.

Q. Were you the first officer on the ship on July 18, 1938?

MR. CHILDS: When I refer to "the ship" in my questions, I am referring to the Respondent's steamship, "City of Fort Worth."

TRIAL EXAMINER SEAGLE: It will be so understood.

By Mr. Childs:

Q. Were you the first master on the ship on July 18, 1938?

A. Yes, sir.

Mr. Castiello: You mean the first mate?

The Witness: First mate.

Trial Examiner Seagle: You said "first master."

Mr. Childs: I should have said "first mate."

The Witness: First mate.

By Mr. Childs:

Q. Where was the ship at that time?

A. Moored alongside the dock in Houston.

Q. Was that sailing day?

A. Yes, sir.

Q. What day of the week was July 18th, if you know?

A. Monday.

Q. What was your first knowledge of what happened on the ship on that day?

A. At 8:00 o'clock in the morning, Joseph Crassavaz came and told me that the men would not go to work.

Q. What kind of work were they supposed to do, required to do?

A. Why, the necessary work, grease the gear, anchor windlass, cargo port, and finish up painting, and double up the mooring lines.

Q. Will you explain what is meant by doubling up the mooring lines?

A. In order for the engineers to get the engine ready, they have got to put out extra lines, so they can work the wheel.

Q. By "doubling up", you mean to let out additional line?

A. Yes, sir.

Q. Is the loading of the ship done by the crew or by stevedores?

A. By stevedores.

Q. Just go on and tell the Examiner what happened on that day.

A. When Joseph Crassavaz came and told me that the men wouldn't go to work, I went back aft.

TRIAL EXAMINER SEAGLE: By the way, who is Mr. Crassavaz?

THE WITNESS: He is the boatswain.

TRIAL EXAMINER SEAGLE: What are the duties of a boatswain?

THE WITNESS: He takes orders from me, as to what to have the sailors do.

By MR. CHILDS:

Q. By the way, over what part of the crew do you have particular charge?

A. Deck department.

Q. You may continue.

A. When I went back aft, the crew was sitting back on the poop deck, and I asked them what the trouble was, why they wouldn't go to work, and Joseph Warren, an A. B., said that, being that he had been elected as spokesman by the rest of them, they had an election, and, as far as he knew, the union had won, but the company did not seem to pay any attention to it, and he also wanted the delegates to have passes to come aboard the ship.

Q. How many men were back on this poop deck?

A. Thirteen.

Q. Do you know the names of these men?

A. Yes, sir.

MR. CHILDS: May this be off the record?

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion outside the record.)

MR. CHILDS: Will you mark this, please, Respondent's Exhibit 1, for identification?

(Thereupon, the document above referred to was marked as Respondent's Exhibit No. 1, for identification.)

By MR. CHILDS:

Q. I show you Respondent's Exhibit 1 for identification, and ask you if that is a list of the thirteen men you refer to, and whether that list also states the positions held by each of these men?

A. Yes, sir, that is the name and position.

Q. On Respondent's Exhibit 1 for identification, there appear the initials "A. B." What does that mean?

A. Able Seaman.

Q. And "O. S."?

A. Ordinary Seaman.

Q. And "F. M."?

A. Fireman.

Q. And "M. B."?

A. Mess boy.

MR. CHILDS: I offer that in evidence.

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion outside the record.)

TRIAL EXAMINER SEAGLE: Is there any objection to receiving Respondent's Exhibit 1 for identification in evidence?

MR. CASTIELLO: No objection.

TRIAL EXAMINER SEAGLE: There being no objection, the document will be admitted in evidence as Respondent's Exhibit No. 1.

(Thereupon, the document above referred to, heretofore marked for identification as "Respondent's Exhibit No. 1," was received in evidence.)

By MR. CHILDS:

Q. You say there were thirteen men sitting down on the poop deck?

A. Yes, sir.

Q. What did any of these men say to you at that time?

A. Well, Warren, he was doing the talking.

Q. Did he say why he did the talking?

A. He had been elected spokesman.

Q. Did he tell you that?

A. Yes.

Q. What did he say?

A. Why, he said the company had not been fair to them in regards to the election they had, they had won out, but the company didn't pay no attention to it, and they wanted delegates to come on board, to have passes to come on board.

Q. What did he say as to the men working?

A. Why, he said I should go and talk to the union delegates, they were down on the dock, and he said they wouldn't do no work until they got what they wanted.

Q. Did you report this conversation to the master?

A. Yes, sir.

Q. At what time?

A. 10:30 a. m.

Q. Prior to the time you saw the master, did you give these orders, that is, the deck men, orders to turn to?

A. Yes, each one.

Q. What is meant by the expression "turn to"?

A. To start in to work, to go to work.

Q. And the work to which you refer is the work you have already described?

A. Yes.

Q. Did you tell them to turn to on this occasion?

A. Yes, sir, I told them I wanted them to go over the side, and paint, and grease the gears, and I wanted them to get the pilot house cleaned up before sailing.

Q. Did you order each one of the men to turn to?

A. Yes, each one separately.

Q. Who were the men that you gave these orders to?

A. Joseph Crassavaz, John Pfuhl, William Reeves.

TRIAL EXAMINER SEAGLE: Is it necessary to give their names? You say you ordered each one of the thirteen?

THE WITNESS: No. Each one of the deck department.

TRIAL EXAMINER SEAGLE: You ordered only the members of the deck department?

THE WITNESS: Yes.

By MR. CHILDS:

Q. It was Reeves, and who else?

A. Joseph Warren, Henry Lathan.

TRIAL EXAMINER SEAGLE: Respondent's Exhibit 1 indicates the duties of the men, does it not?

THE WITNESS: And William Burns.

MR. CHILDS: Yes, it does.

By MR. CHILDS:

Q. What did they do?

A. They refused to go to work.

Q. Do you recall what happened when the captain came back at 10:30, came aboard the ship at 10:30?

A. Yes.

Q. Did you report it to him?

A. I told the captain that the men refused to work, and we went back on the poop deck, the captain, the chief engineer, Norton, and Shreider, and myself.

Q. Who is Mr. Shreider?

A. He is the agent for the Southern Steamship Company in Houston.

Q. The local agent?

A. Yes, sir.

Q. And who is Mr. Norton?

A. The chief engineer, of the ship.

Q. Did you hear what the captain said to the crew when he went back there?

A. He asked them what the trouble was, and they told him the same as they had told me, Joseph Warren did, and the captain told them, "You men have signed articles, you made an agreement to make this trip, and you are violating the law by refusing to go to work," and he told them, each one separate, to go and to work.

Q. Did they obey his order?

A. No, sir, they refused to work.

And he gave them one hour to make up their mind to go to work. That would be about 11:30.

Q. Now, when 11:30 arrived, did the men go to work?

A. No, sir.

Q. Are you referring now to the thirteen men who were on poop deck?

A. Yes.

Q. Did anyone other than persons connected with the crew come on board the ship that morning—or, connected with the steamship company, I should say? Did anyone other than persons connected with the steamship company come on board the ship that morning?

A. Mr. Shreider and the United States Shipping Commissioner was on board.

Q. Do you remember what his name was?

A. His name was Glenn.

TRIAL EXAMINER SEAGLE: Glenn?

THE WITNESS: Yes.

By MR. CHILDS:

Q. Did you hear what, if anything, the shipping commissioner said to these members of the crew?

A. No, sir, I didn't go back with them.

Q. Did the men turn to that afternoon?

A. No, sir.

Q. Did they still refuse to go to work?

A. Yes, sir.

Q. What time was it the men turned to?

A. Seven o'clock in the evening.

Q. Do you know of your own knowledge how it was that these men turned to at that time?

A. No, sir.

Q. But they had refused to work up to that time?

A. Yes.

Q. What time did the ship sail?

A. About 9:00 o'clock in the evening.

Q. Now, did you have any discussions with Captain Rudan, either on the trip up to Philadelphia, or at Philadelphia, about these men who had joined in this disobedience to the orders of the ship's officers?

MR. LUSTIG: I object, on the ground that the conversation betwen the two officers of the Respondent is not material, and a self-serving declaration, and incompetent.

MR. CHILDS: My answer to that is that in this case what is offered here is not hearsay, but it is the grounds on which the Respondent acted, and certainly the reports that were made by the officer to the captain, and the captain to the company, are material and relevant.

Obviously, the company, in its action, must be guided by the reports that come from its officers.

This question is coming into this case on a number of occasions, because we propose to show that the officers and the company acted on the basis of reports made by subordinate officers.

MR. LUSTIG: Mr. Trial Examiner, I still maintain that any conversation that may have been had between the first mate, the witness, and the captain is not binding upon the union, nor can it in any way throw any light on this.

If Respondent wishes to show reports, he should confine himself to such conversation as deals with reports, and not with merely loose conversation that may have occurred.

MR. CHILDS: Do I understand that the objection is based upon the ground that these conversations may not have dealt with reports, oral or written, made by the subordinate officer to his superior officer?

If so, I can rephrase the question.

MR. LUSTIG: I still maintain that any conversation between two officers of the Respondent on board the ship, which is not in line of duty, which is not in the nature of a report, is merely a self-serving declaration.

TRIAL EXAMINER SEAGLE: I think that objection is altogether too broad.

I mean, whether the testimony is admissible, I think, depends on the nature of the conversation. Consequently, I shall permit the witness to testify subject to the objection.

MR. LUSTIG: May I have an exception?

TRIAL EXAMINER SEAGLE: As I believe I stated the first day, it is not necessary for you to request a special exception. You automatically have an exception when your objection is overruled.

MR. CHILDS: Counsel for the Southern Steamship Company has been proceeding on that assumption.

Now, Mr. Reporter, will you read the question?

(Question read.)

A. Yes, sir.

By MR. CHILDS:

Q. Just state what the conversation was.

MR. LUSTIG: I object, your Honor, on the ground no time or place has been fixed as to the conversations.

TRIAL EXAMINER SEAGLE: Will you fix the time and place?

By MR. CHILDS:

Q. When did the ship sail from Houston?

A. Nine o'clock p. m.

Q. On July 18th?

A. Yes.

Q. 1938?

A. Yes.

Q. Did these conversations occur on the ship after it had left the Port of Houston?

A. After it had left the Port of Houston, yes.

Q. And when did the ship arrive in the Port of Philadelphia?

A. A week later.

Q. That is on July 25th?

A. July 25th.

Q. 1938?

A. Yes.

TRIAL EXAMINER SEAGLE: Can't you state more definitely what day it was?

THE WITNESS: Monday, July 21st.

TRIAL EXAMINER SEAGLE: This conversation was had on Monday, July 21st?

THE WITNESS: It was before we got up here, on the way up.

TRIAL EXAMINER SEAGLE: But you were a week in making the voyage, were you not?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: How soon after you sailed——

THE WITNESS: The next day.

TRIAL EXAMINER SEAGLE (continuing): —was this conversation held?

THE WITNESS: The next day.

TRIAL EXAMINER SEAGLE: After the ship sailed?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: From Houston?

THE WITNESS: Yes.

By MR. CHILDS:

Q. What conversation took place as to the conduct of members of the crew at Houston on July 18th?

A. Why, we talked about that they refused to work.

MR. LUSTIG: Now, I object as to that type of testimony, Mr. Examiner, on the ground that "we talked" is no testimony.

TRIAL EXAMINER SEAGLE: Had you finished your answer?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: May I suggest that you wait until the witness has finished his answer?

MR. LUSTIG: Mr. Trial Examiner, the way the witness began, he was summarizing the conversation.

TRIAL EXAMINER SEAGLE: Will you tell us what the conversation actually was?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: In substance?

THE WITNESS: I talked to the captain about the behavior of these men down in Houston in refusing to work, and also about the previous behavior.

TRIAL EXAMINER SEAGLE: What do you mean by "previous behavior"?

THE WITNESS: Joseph Warren, he had only been on the ship two trips, that is about six weeks. During that time, he showed that he was a heavy drinker, he neglected his duty, failed to show up on time, and we decided it would be best if we let him go, because he didn't show any improvement, he proved not to be very reliable.

We also talked about John Pfuhl, he had been very careless, and he was getting worse.

MR. CASTIELLO: I object to those conclusions.

TRIAL EXAMINER SEAGLE: The objection is sustained.

Will you state what the conversation was that you had with the captain?

THE WITNESS: Yes. I was telling the captain about this.

TRIAL EXAMINER SEAGLE: Refrain from telling us what your conclusion was as to the past conduct. Just tell us what you said to the captain, and what the captain said to you.

THE WITNESS: Yes. Well, I told him about John Pfuhl, the way he had been behaving, and his carelessness.

MR. CASTIELLO: Same objection.

MR. CHILDS: I would point out there, this is what he actually said to the captain.

TRIAL EXAMINER SEAGLE: Did you tell the captain that Pfuhl had been careless?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: All right.

MR. CASTIELLO: You just try to tell us what you said to the captain, and what he said to you.

THE WITNESS: We decided it would be best if we let him go.

By MR. LUSTIG:

Q. Who?

A. John Pfuhl.

By Mr. Childs:

Q. Did you give any instances in this conversation of carelessness on the part of Pfuhl?

A. Yes.

Q. Just tell what you said.

A. Like one time they were painting the smokestack, and, while John Pfuhl was up there——

Mr. Castiello: Will you state the 'ime for us, when this took place?

The Witness: I should say it was about six weeks or so before this here happened. The exact date I can't remember.

Trial Examiner Seagle: You mean about six weeks before this conversation?

The Witness: Yes.

While he was up there on the smokestack, he acted very careless, and he was told to be more careful.

Mr. Lustig: I move to strike out that he was up there and acted very careless, as being a conclusion.

Trial Examiner Seagle: The motion is granted.

Will you tell us what he did, on that occasion? And did you tell the captain about that?

The Witness: Yes.

Trial Examiner Seagle: On that occasion?

The Witness: Yes.

Trial Examiner Seagle: All right. Tell us what you said to the captain.

The Witness: He upset a paint box, and spilled the paint all over the deck.

If there had been anybody underneath, they would have been apt to be hurt.

MR. LUSTIG: I move to strike that out, as being speculative.

MR. CASTIELLO: I join in the motion.

TRIAL EXAMINER SEAGLE: The motion is granted.

By MR. CHILDS:

Q. Go ahead.

A. And another time, he also spilled paint on the ship's side, black paint onto the white, and he was told about it, to clean it up, but he failed to do it.

By MR. LUSTIG:

Q. When was that?

A. That was about three weeks before this.

TRIAL EXAMINER SEAGLE: By that, do you mean it was three weeks before the first incident, or three weeks before your conversation with the captain?

THE WITNESS: Three weeks before the conversation with the captain.

By MR. CHILDS:

Q. Had you told Pfuhl to wipe off that paint that was spilled?

A. The boatswain, Crassavaz, he had told him.

Q. Did he do it?

A. No, sir.

Q. Did the boatswain report that to you?

A. Yes, sir.

Q. And did you report that to the captain?

A. Yes, that is what I told the captain.

TRIAL EXAMINER SEAGLE: During this conversation?

THE WITNESS: Yes.

So they decided that they would pay him up and let him go when we got to Philadelphia.

And another time, I told Pfuhl that we are going to move the ship early in the morning, to be sure to get back on time.

By MR. CHILDS:

Q. When was that?

A. That was about three weeks before this conversation with the captain.

Q. Go ahead.

A. And he failed to show up in time, in the morning.

Q. Did you report that to the captain——

A. Yes.

Q. (Continuing): —in this conversation?

A. Yes.

TRIAL EXAMINER SEAGLE: You say he failed to show up in time. Does that mean he missed the ship?

THE WITNESS: Yes, he missed the ship.

TRIAL EXAMINER SEAGLE: He didn't make that trip?

THE WITNESS: We only ran from the dock to the shipyard.

TRIAL EXAMINER SEAGLE: I see. And after you came out of the shipyard, he boarded the ship?

THE WITNESS: He was on the dock when the ship got there.

TRIAL EXAMINER SEAGLE: So he made the trip out of the shipyard?

THE WITNESS: Yes.

By MR. CHILDS:

Q. Did you say anything further to Captain Rudan in this conversation?

A. No, sir.

Q. Go ahead.

A. The rest of the men had been behaving good previous to this refusing to go to work.

Q. Well, now, Tracey and Fergeson were not in your department, were they?

A. No, sir.

Q. And Smith was not in your department?

A. No.

Q. In this conversation with the captain, did you say anything about logging these men?

A. Yes.

Q. What did you say about that?

A. We had everything ready, the log book written up, so if it should be decided, the men could be logged.

Q. What do you mean "everything written up"?

A. The log book has got to be written up, stating the grounds that they have to be logged, for any offense they commit, the date and time.

Q. Did you make a recommendation to the captain that these two men, Tracey and Pfuhl, should not be re-signed at the conclusion of the voyage?

A. Joseph Warren and Pfuhl.

MR. LUSTIG: I object to that type of leading question, Mr. Trial Examiner.

MR. CHILDS: I will rephrase it.

TRIAL EXAMINER SEAGLE: The objection is sustained.

MR. LUSTIG: And I wish the attorney for the Respondent would avoid that type of leading question, because my objection, of course, besides consuming time, suggests the answer to the witness.

MR. CASTIELLO: And, in that case, I move to strike any answers that come in before we have an opportunity to make objection.

TRIAL EXAMINER SEAGLE: I will strike the answer to the question.

By MR. CHILDS:

Q. Did you make any recommendations as to these men, Warren and Pfuhl?

A. Yes.

Q. What were those recommendations?

A. That they should let the men go, and should pay them off when we got to Philadelphia.

Q. Did you have any conversations with these men when they were paid off?

A. Yes, sir.

Q. State what they were.

A. I told Joseph Warren that he was finished, and he asked me why.

Q. You told whom?

A. Joseph Warren, A. B.

And I told him, "Joseph, you have been here two trips. The first trip you got drunk down in Houston, and lost a day's work, and when I spoke to you about it, you told me you were not in the habit of doing that, so I gave you another chance, but up in Philadelphia again you failed to turn to, go to work in the morning when you were supposed to, now you refused to go to work down in Houston, so I don't want you any more."

Q. About whom are you talking now?

A. Joseph Warren.

TRIAL EXAMINER SEAGLE: Are you talking about Warren, or Pfuhl?

THE WITNESS: Warren.

TRIAL EXAMINER SEAGLE: You say that Warren had refused to turn to?

THE WITNESS: Warren, yes.

TRIAL EXAMINER SEAGLE: And that you said your objection to Warren was that he was a heavy drinker? Isn't that what you told the captain?

THE WITNESS: That he refused to turn to down in Houston.

MR. CHILDS: He said that, too, Mr. Examiner.

By MR. CASTIELLO:

Q. You said he refused to turn to in Philadelphia. Which is right, Houston or Philadelphia?

A. Houston.

TRIAL EXAMINER SEAGLE: I recall no testimony as to Warren refusing to turn to.

I remember testimony as to Pfuhl refusing to turn to.

MR. CHILDS: Can we have this off the record?

TRIAL EXAMINER SEAGLE: No, I don't see any reason for having it off the record.

MR. CHILDS: My recollection of the witness' testimony is that he said Warren was one of these thirteen men on the poop deck on July 18th at Houston, that Warren was the spokesman for these men, and said he had been appointed their spokesman, and that Warren was one of the men in the deck department who refused to obey the first mate's orders at Houston.

TRIAL EXAMINER SEAGLE: Will you read back the witness' testimony?

(Record read by the reporter.)

TRIAL EXAMINER SEAGLE: I think enough of the testimony has been read to show that the witness gave no testimony as to Warren refusing to turn to.

All he said was that Warren was a heavy drinker.

MR. CHILDS: I would contend, your Honor, that he said he talked about the conduct of these men down in Houston.

By MR. CHILDS:

Q. When you say, Mr. Helland, on the 19th of July, 1938, that you talked with the captain about the conduct of these men down in Houston, to what are you referring?

A. To their refusal to work.

Q. Did you discuss that with the captain at that time?

A. Yes, sir.

TRIAL EXAMINER SEAGLE: In saying that Warren refused to turn to, you are confining your testimony to the day the strike occurr when the men refused to work?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: On July 18th?

THE WITNESS: On July 18th.

TRIAL EXAMINER SEAGLE: Very well.

MR. CASTIELLO: I understand it now.

TRIAL EXAMINER SEAGLE: You may proceed.

MR. CHILDS: Cross-examine.

CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. When you went up to the strikers on the poop deck, and asked them what is the trouble, didn't they tell you, "We are on strike?" Did they, or didn't they?

A. They did.

Q. Why didn't you tell us that on your direct examination?

A. Well, because they refused to work. I had nothing to do with any strikes. I just wanted them to go to work, and they refused to do that.

Q. They told you that they were striking because they had won the election before the Labor Board, and that they were entitled to union recognition, did they not?

A. Yes.

Q. Did you tell them that the election was not a valid one?

A. No, sir.

Q. Were you present on the ship when the captain said to them that the certification of the Board, that is the election I am speaking of, was not a valid one?

A. No.

Q. Didn't the strikers tell you that the company refused to enter into an agreement with them?

A. They told me the company did not pay any attention to that election.

Q. Yes. And they also told you that the union had asked the company to enter into an agreement, but the company was not paying any attention to that, either?

A. They only told me that the company was not paying any attention to the election that they had.

Q. Didn't they tell you also that they were striking because they had the right to strike?

A. No, sir.

Q. What's that?

A. No.

Q. Are you sure of that?

A. Yes. They didn't tell me anything about their rights of striking.

Q. They also asked you, if you wanted them to go back to work and settle this strike of theirs, that you should see their delegates who were on the dock, didn't they?

A. They didn't put it in those words.

Q. What did they say?

A. When Joseph Warren told me that he had been elected spokesman, he also told me I should go and talk to the delegates on the dock, the union delegates.

Q. And what did you say?

A. Why, I have nothing to do with those men, I don't even know who they are.

Q. Didn't you tell them that the company doesn't recognize the delegates of the union on the dock?

A. No, sir.

Q. Are you sure about that?

A. I told them I didn't have anything to do with the delegates.

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion outside the record.)

By MR. CASTIELLO:

Q. You were the chief mate at this time, about 8:00 o'clock in the morning, weren't you?

A. Yes.

Q. And, as chief mate in the absence of the captain, you were in charge of the ship, too?

A. Yes, sir.

Q. The captain was away at that time, was he not?

A. Yes, sir.

Q. So you were the proper person for the strikers to speak to and ask for union recognition, weren't you?

MR. CHILDS: I object to that as calling for a conclusion.

TRIAL EXAMINER SEAGLE: The objection is sustained.

By MR. CASTIELLO:

Q. You spoke of Mr. Pfuhl and of Mr. Warren?

A. Yes.

Q. And you told of a conversation that you had with the captain, is that correct?

A. Yes.

Q. And you decided finally that the men should be let go?

A. Those two men.

Q. Yes. What was the reason that the men were to be let go?

A. For the reason that I stated.

Q. You tell me.

A. Why, Joseph Warren had been on the ship two trips, and during that time he proved to be a heavy drinker. The first trip, down in Houston, he failed to show up in the morning, and he lost a day's work.

Q. You didn't fire him for that, did you?

A. I fired him for that.

Q. Wait now, wait a minute. This happened before July 19th, when you had the conversation with the captain?

A. Yes.

Q. When this affair in which Warren is supposed to have gotten drunk occurred, you didn't fire him right away for that, did you?

A. Not right away.

Q. You let him ship again for two trips, didn't you?

A. For one more trip.

Q. For one more trip?

A. Yes.

Q. You never told Warren if that happened again, he would be fired, did you?

A. I told him not to let that happen again.

Q. When did you tell him that?

A. I told him when we got back to Philadelphia, before we signed on to make another trip.

Q. Mr. Warren was not logged for this one day he missed work, was he?

A. No.

Q. Isn't it a fact that the reason that you recommended the discharge of Mr. Warren and Mr. Pfuhl is because they went on strike in Houston?

MR. CHILDS: I object to the question, insofar as it refers to a strike, on the ground that under the law men who are under ship's articles have no right to strike.

MR. CASTIELLO: Is that merely your opinion of what the law is?

MR. CHILDS: I am not in a position to do anything but give you my opinion of the law.

TRIAL EXAMINER SEAGLE: It will be understood for the record that the term "strike" is used in a factual

sense, without legal connotation, meaning a refusal to work.

Will you answer that question?

MR. CASTIELLO: Read the question to him, please, Mr. Reporter.

(Question read.)

A. Together with the other fellows they had with them.

By MR. CASTIELLO:

Q. So the answer is, "yes," isn't it?

MR. CHILDS: I object to that. He has given the answer.

MR. MCKAIG: He didn't say "yes."

TRIAL EXAMINER SEAGLE: Objection sustained.

By MR. CASTIELLO:

Q. You said, "together with the other fellows"?

A. Yes, sir.

Q. You remember the day that the strike took place very well, don't you?

A. Yes.

Q. You know what the auxiliary machinery is, do you not?

A. Yes, I do.

Q. That machinery was not interfered with at all by the strikers, was it?

A. Why, you see, that is out of my department now. That comes under the engineers.

Q. But you were able to observe, as chief mate, that the auxiliary machines were working, were you not?

A. As far as I know, they were working.

Q. And you didn't see any of the strikers attempt to stop the other men on the ship from working the auxiliary machines, did you?

A. No.

Q. As a matter of fact, the strikers didn't interfere in any manner with the safety devices of the ship, did they?

A. Not that I know of.

Q. They just sat on the poop deck, isn't that correct?

A. They sat on the poop deck.

Q. They didn't try to stop the stevedores from loading the boat, did they?

A. Not that I—well, now, wait a minute.

Q. All right.

A. Is it all right to say what I have heard? I didn't see it?

Q. No. You tell me what you saw.

A. I didn't see it, no, sir.

Q. As far as you know, you don't know of any interference of that kind?

A. No.

Q. You were chief mate, weren't you?

A. Yes.

Q. And if anything like that had occurred, you were around and would be able to see it, would you not?

A. No, not necessarily.

Q. You are in charge of the deck, aren't you?

A. I am not in charge of the engine room, where the auxiliaries are operated.

Q. I am talking about the loading and unloading of the ship. The loading and unloading is done on the deck, isn't it?

A. Yes.

Q. And you are in charge of the deck?

A. Yes.

Q. As a matter of fact, don't you see that the cargo is properly loaded on the boat?

A. I do.

Q. And you saw to it that day that it was properly loaded, didn't you?

A. Yes, sir.

Q. And you didn't see any interference at all by the strikers with that loading?

A. No, sir.

Q. Was food served on board the ship that day?

A. Yes.

Q. The strikers did not try to interfere with the service of food to anyone, did they?

A. No.

MR. CHILDS: It is understood, Mr. Examiner, in order not to make extended objections, that the Respondent's contention is there was no strike here involved, so I am taking exception to the fact that the Board's counsel refers to strikes.

TRIAL EXAMINER SEAGLE: You will be deemed to have an exception to the use of the word "strike" in connection with the refusal of certain members of the crew to work on July 18th.

By MR. CASTIELLO:

Q. Now, Mr. Helland, this strike or refusal to work involved only one union, didn't it?

A. I don't know.

Q. Don't you?

A. No.

Q. Did the men tell you anything differently?

A. No.

Q. "The Fort Worth," like the other vessels of the company, carried only freight, isn't that correct?

A. That is correct.

Q. And this strike or refusal to work by certain members of the crew did not in any way delay the loading of that freight, did it?

A. No, sir.

Q. In your experience with the company, isn't it a fact that the sailing time varies considerably on the scheduled sailing date because of the fact that you must sometimes wait for cargo?

A. It doesn't vary much.

Q. How much does it vary?

A. Oh, two or three hours, as a rule.

Q. As a rule, yes.

In your experience at Houston, what time does the ship ordinarily sail?

A. At four or five o'clock in the afternoon.

Q. And what time did you say the ship sailed this day?

A. Nine o'clock in the evening.

Q. Isn't it a fact that the ship has sailed at 9:00 o'clock on other occasions when there wasn't any refusal to work?

A. As far as I can remember, that is the latest I ever sailed from Houston.

Q. How late that evening were the stevedores loading the ship?

A. Right up to shortly before we sailed.

Q. How shortly before, would you say?

A. Twenty minutes.

Q. So that the refusal to work of the men did not delay the ship?

A. No, sir.

Q. You were just waiting for the stevedores to finish loading?

A. Yes, sir.

Q. And when they finished loading, you sailed?

A. Yes, sir.

Q. Right on schedule?

A. Yes, sir.

Q. Do you know, Mr. Helland, how many men who struck were discharged?

A. There was five.

Q. You testified that thirteen men had refused to obey orders, didn't you?

A. Yes, sir.

Q. Can you tell us why the company only picked five out of thirteen for discharge?

A. I picked two out of the deck department.

Q. Now, hold it a minute there. How many others in the deck department were on strike?

A. There was four others.

Q. Four others beside Warren and Pfuhl?

A. Yes.

TRIAL EXAMINER SEAGLE: Who were the other four?

THE WITNESS: Joseph Crassavaz, William Reeves, Henry Lathan, William Burns.

By MR. CASTIELLO:

Q. Didn't these four men who were not discharged refuse to obey the orders in the same degree as the two men that you recommended for discharge?

A. Yes.

Q. Why didn't you recommend that the other four men be discharged also?

A. Their previous behavior had been good.

Q. What?

A. Their previous behavior on the ship had been good.

Q. Are you familiar with coastwise articles?

A. Yes, sir.

Q. Isn't it a fact that men under coastwise articles, and particularly the men who were on "The Fort Worth" that day, could have quit when they were in Houston?

MR. CHILDS: I object to that, as calling for an opinion of the law.

TRIAL EXAMINER SEAGLE: The objection is overruled.

MR. CASTIELLO: He is a master.

A. Why, they could walk off the ship, but they couldn't demand to get any pay.

By MR. CASTIELLO:

Q. That's right, but they could quit the ship?

A. They could walk off the ship, sure.

Q. And the company could fire them, too, at Houston, if it wanted to?

A. They would take the consequence, but they could fire them.

TRIAL EXAMINER SEAGLE: What do you mean by "consequence"?

THE WITNESS: They have signed articles to make the trip back to Philadelphia, and, if you fire them, you have to pay the transportation back to Philadelphia, and also extra wages.

MR. CASTIELLO: That is correct.

By MR. CASTIELLO:

Q. So that if a man wished to quit at Houston, he could quit, but of course, he would lose a certain amount of pay, would he not?

A. Yes.

TRIAL EXAMINER SEAGLE: Would there be any other consequence attached to his quitting, apart from his loss of pay?

THE WITNESS: Well, no, I don't think so.

By MR. CASTIELLO:

Q. On the way back from Houston to Philadelphia, the whole crew behaved well, did it not, from what you could observe?

A. Well, all except Edward Smith.

Q. All except Edward Smith?

A. Yes, sir.

Q. Didn't Edward Smith do his work properly?

A. Well, he seemed to——

Q. No, tell me what he did, that you say is improper.

A. Well, when he was spoken to, it didn't seem that he wanted to answer you, he didn't act like he had been acting before in that respect.

Now, that was the only thing I observed on him.

Q. You only observed that of Edward Smith?

A. Yes.

Q. Did you observe the conduct of any of the other strikers?

A. It seemed to be all right.

Q. It seemed to be all right?

A. Yes, sir.

Q. Just as it was any other time?

A. Yes.

TRIAL EXAMINER SEAGLE: Just what do you mean when you say he did not seem to want to answer? Did you try to engage him in conversation at any time?

THE WITNESS: No, sir. You would say, "Good morning," and he would say, "Good morning," just like that. Before, he was very polite.

TRIAL EXAMINER SEAGLE: But he did not refuse to say "Good morning"?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Did you attempt to have any other conversation with him?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Apart from saying "Good morning"?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: And he said "Good morning"?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: From what do you judge that he did not seem to want to answer?

THE WITNESS: His actions.

TRIAL EXAMINER SEAGLE: That's what I want to know. What did he do?

THE WITNESS: He would say it kind of half-hearted-like.

TRIAL EXAMINER SEAGLE: He would say "Good morning" half-heartedly, is that it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: How can you tell it was half-hearted?

THE WITNESS: Well, it was sort of surly.

TRIAL EXAMINER SEAGLE: What's that?

THE WITNESS: Sort of that he wouldn't do it unless he had to.

TRIAL EXAMINER SEAGLE: He didn't say that, though?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: That is just your impression that you got?

THE WITNESS: Yes.

By MR. CASTIELLO:

Q. So that we can say, can we not, Mr. Helland, that with the possible exception of Mr. Smith, who, you say, in your opinion, was a bit surly, the crew, as a whole, behaved and conducted itself just as it always had?

A. Yes.

MR. CASTIELLO: That's all.

By MR. LUSTIG:

Q. Would you say that if Pfuhl and Warren had not disobeyed you, and the captain, at Houston, in other words, if they had not failed to respond to your orders and the captain's orders at Houston on July 18, 1938, on that day, you would not have discharged them in Philadelphia, would you?

A. Yes, sir.

Q. In other words, you would have discharged them anyhow even if they had obeyed the orders? Will you answer that?

A. Yes, I had my mind made up I would let them go when we got back.

TRIAL EXAMINER SEAGLE: Do you understand the question? I don't think you do. The question is, would you have discharged Warren or Pfuhl for their past misdemeanors if they also had not refused to work on July 18th when they went on strike?

THE WITNESS: I would have discharged them anyhow.

TRIAL EXAMINER SEAGLE: You would have?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Both Pfuhl and Warren?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Didn't you tell us a few minutes ago that the fact Warren had gone on strike was one of the reasons for your discharging him?

THE WITNESS: Well, together with it.

TRIAL EXAMINER SEAGLE: Together with it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Then it was a fact, wasn't it? That was one of your reasons, wasn't it?

THE WITNESS: Well, it may be one of the reasons.

TRIAL EXAMINER SEAGLE: Well, was it, or wasn't it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And it was true in both the case of Warren and Pfuhl, wasn't it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Both of them?

THE WITNESS: Yes.

By Mr. Lustig:

Q. You did not discharge these men in Houston, did you, these men who refused to work?

A. No.

Q. Did the same men sail the ship back to Philadelphia?

A. Yes.

Q. When you left Houston with these same men, you were not worried about the fact that these men would be unfit to sail the ship back to Philadelphia, were you? You were not worried about that?

Mr. Childs: That is objected to as immaterial, and calling for a conclusion.

Trial Examiner Seagle: Read the question.

(Question read.)

Trial Examiner Seagle: The objection is overruled.

By Mr. Lustig:

Q. Will you answer that, Mr. Helland?

A. Well, I didn't like it much, because they didn't seem to be very reliable. If they refused to work in one place, they can refuse at sea, too, or at another place.

Q. Then when you left Houston, you regarded the crew as unfit, didn't you? Did you or did you not?

A. No, not exactly.

Q. You regarded it as a safe crew, then?

A. Not very safe.

Q. Would you have been derelict in your duty to sail with a crew that you did not regard as safe?

A. No.

Q. You would not have been derelict in your duty? Do you understand what the word "derelict" means?

A. Yes. I wouldn't.

Q. In other words, when you sailed from Houston, you did not regard yourself as sailing with an unsafe crew, did you?

A. No, I don't think so.

MR. CASTIELLO: Mr. Examiner, the answers of the witness appear to me to be as sort of evasive.

One time he says one thing, and the next time he says another.

The manner in which he answers the questions is hardly conducive of telling the truth.

MR. CHILDS: I resent that.

MR. MCKAIG: I would like to say the same thing with regard to the way the questions are asked, trying to make the man say things he does not mean to say, does not intend to say.

TRIAL EXAMINER SEAGLE: Let's get on with the examination. These conversations are not necessary.

By MR. LUSTIG:

Q. Did you recommend to the captain the dismissal of any of these men in Houston?

A. No, sir.

Q. So that it was not until you left Houston and were on your way back to Philadelphia, is that right?

A. Yes.

Q. That you discussed the dismissal of these three men?

A. Yes.

Q. Or two men?

A. Two men.

Q. Did you advise these men before they reached Philadelphia that they were no longer wanted?

A. No, sir.

Q. Wasn't it customary to advise men before they reached the port of their discharge that their services were no longer required?

A. No, sir, it is not customary.

Q. It is not customary?

A. No, sir.

Q. What is your custom? Will you describe the custom on board ships of this company with regard to the hiring and firing of the men?

A. When the man is paid off, then they tell him he is finished, they don't want him any more.

Q. Only when he is paid off?

A. Yes.

Q. Do you question the men before they come back as to whether they want to sail again?

A. No, sir.

Q. You reshipped the same crew, didn't you, except for those you discharged?

A. Except for those two.

Q. It is only when the men sign off the articles that they know whether or not they are going to make another trip?

A. Yes.

Q. And if nothing is said to them when they sign the articles off, it is understood they make another trip?

A. That they make another trip, yes, sir.

Q. Was Pfuhl logged for any of these incidents that you have described?

A. No, sir.

Q. As being indicative of his unreliability or carelessness?

A. He was not logged.

Q. Is it unusual for a paint box to be upset while painting a smokestack?

A. It is unusual.

Q. How long have you been sailing?

A. Twenty-five years.

Q. You say that is unusual?

A. Yes, sir.

Q. Do you know whether the painting was done in port or out of port?

A. It was done in port.

Q. You didn't discharge him when that occurred, did you?

A. No, sir, but I warned him about it.

Q. You warned him about it?

A. Yes.

Q. When he spilled the black paint along the side of the ship, you did not discharge him then, did you?

A. No, sir.

Q. Which occurred first?

A. The spilling of the paint from the smokestack.

Q. That occurred first?

A. That occurred first, yes, sir.

Q. Then you warned him if he did it again, he would be discharged, isn't that correct?

A. I didn't use those words.

Q. What did you say to him?

A. I warned him to be more careful.

Q. When he spilled the black paint, that was the same kind of carelessness, in your eyes, wasn't it?

A. Carelessness, yes.

Q. Did you warn him again?

A. I didn't know about that until later.

Q. You didn't discharge him after you learned that, did you?

A. Yes, I did.

Q. You discharged him?

A. I found that out on the way North, after he had refused to work in Houston.

Q. You first found out about this spilling of the black paint three weeks after it occurred?

A. That it was him that had done it.

Q. That it was him that had done it?

A. Yes.

Q. How did you find that out?

A. The boatswain, Joe Crassavaz, told me that.

Q. He told you that?

A. Yes.

Q. Crassavaz was one of the strikers, wasn't he?

A. Yes, sir.

Q. And on the way back he told you about Pfuhl having spilled this black paint, is that right?

A. Yes, sir.

Q. How did it come about, under what circumstances, did he tell you about Pfuhl spilling this paint?

A. We were talking about getting that paint off of there, and that is how that came about. I says, "Who was it that spilled that paint there, anyhow?" so then he told me it was John Pfuhl that had done that.

Q. He was one of the strikers, wasn't he?

A. He was one of the ones that refused to work.

Q. That is, Crassavaz, the boatswain, was also one of the members who struck, or refused to work, down in Houston?

A. Yes.

Q. Did you ever tell Pfuhl about the spilling of the black paint, ask him whether he did it?

A. I didn't ask him why he did it. I told him, at the same time I told him he was finished, about the spilling of that paint.

Q. At the time you told him he was finished, did you also mention to him about the spilling of the paint, on the smokestack?

A. I told him he had been careless in the paint, that he had spilled, and didn't show any improvement.

TRIAL EXAMINER SEAGLE: Are you talking about what you said to Pfuhl, or what you said to Crassavaz?

THE WITNESS: Pfuhl.

TRIAL EXAMINER SEAGLE: Is that your question, Mr. Lustig?

MR. LUSTIG: Yes, whether he had ever mentioned it to Pfuhl.

TRIAL EXAMINER SEAGLE: Had you mentioned it to Pfuhl before the discharge, at any time?

THE WITNESS: About the spilling of the black paint on the side of the ship?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: How did you come to talk to Crassavaz about it?

THE WITNESS: Well, about getting that paint off of there.

TRIAL EXAMINER SEAGLE: You mean, you saw the paint on the deck?

THE WITNESS: I saw it on the side of the ship.

TRIAL EXAMINER SEAGLE: And the first time you saw it is when you talked to Crassavaz about it?

THE WITNESS: Why, I had seen it in Philadelphia, and I talked to him about it then, but he didn't tell me who had done it then.

TRIAL EXAMINER SEAGLE: You talked to whom about it?

THE WITNESS: Crassavaz.

TRIAL EXAMINER SEAGLE: In Philadelphia?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You mean before the ship sailed for Houston?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You saw it at that time?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And you spoke to Crassavaz about it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Do you know how long it was after the spilling of the paint that you first observed it?

THE WITNESS: That same day.

TRIAL EXAMINER SEAGLE: You did observe it the same day?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And what effort did you make to find out who spilled the paint?

THE WITNESS: I asked Crassavaz then who had did it.

TRIAL EXAMINER SEAGLE: Did you ask anybody else?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: At that time, Crassavaz refused to tell you?

THE WITNESS: He didn't know, then.

TRIAL EXAMINER SEAGLE: He said he didn't know?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: When did you next speak to Crassavaz about it?

THE WITNESS: On the way North.

TRIAL EXAMINER SEAGLE: From Houston?

THE WITNESS: From Houston, after this refusal to work down there.

TRIAL EXAMINER SEAGLE: And what did you say then? Tell us exactly what you said to him.

THE WITNESS: I asked him then if he knew who had spilled that paint, and he told me that John Pfuhl was the one that had spilled it; that he had promised to clean it up, but he had failed to do so.

TRIAL EXAMINER SEAGLE: He had already told you he didn't know who spilled it, had he not, the first time you talked to him?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: In this conversation you had with him the second time, did you ask him how it was he had learned who spilled the paint?

THE WITNESS: I didn't ask him that.

TRIAL EXAMINER SEAGLE: You were not interested in that?

THE WITNESS: Well, I don't recall asking him how he had found it out.

TRIAL EXAMINER SEAGLE: And what made you interested in asking him the second time about the spilling of the paint, after he had already told once he didn't know who had spilled the paint?

THE WITNESS: Well, we talked about the working of the ship.

TRIAL EXAMINER SEAGLE: What did you say on that occasion?

THE WITNESS: He had been out, and he got that paint off, and I said, "Who was it spilled that paint?"

TRIAL EXAMINER SEAGLE: What do you mean, you talked about the working of the ship?

THE WITNESS: Well, you see, I tell the boatswain what is to be done around the deck in regards to painting, and such, and he works the sailors.

TRIAL EXAMINER SEAGLE: Is Crassavaz the boatswain?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did you discuss the strike with him at all on that occasion?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: What had happened in Houston?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: You said not a single word about the strike, or about Pfuhl having been involved in the strike?

THE WITNESS: No, sir, I didn't say anything about that.

TRIAL EXAMINER SEAGLE: Did you speak to Pfuhl after Crassavaz told you it was he who had spilled the paint?

THE WITNESS: I told Pfuhl that in Philadelphia.

TRIAL EXAMINER SEAGLE: No, I mean immediately after.

THE WITNESS: Not immediately after, no.

TRIAL EXAMINER SEAGLE: You say the voyage from Houston occupied a week?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: On what day of the voyage did you speak to Crassavaz, how many days after you sailed from Houston?

THE WITNESS: Oh, I should say a couple of days after we left Houston.

TRIAL EXAMINER SEAGLE: A couple of days?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: During that voyage, at any time did you speak to Crassavaz about this incident of spilling the paint?

THE WITNESS: About the second day after we left.

TRIAL EXAMINER SEAGLE: I don't know whether you understand my question. Did you, at any time, between the time that you spoke to Crassavaz about

Pfuhl having spilled this paint, speak to Pfuhl himself, before you came in to Philadelphia?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: The first time, therefore, you said anything at all to Pfuhl about spilling the paint is when you discharged him, is that correct?

THE WITNESS: That is correct, yes.

TRIAL EXAMINER SEAGLE: Did you, at the time you discharged him, ask him how it had happened that he had spilled the paint?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Did you ask him whether he had spilled the paint?

THE WITNESS: No.

By MR. CASTIELLO:

Q. In your experience with the company, did you ever recommend that anyone be discharged because he had spilled paint?

A. When he continues to spill paint, yes, sir, I will discharge him.

Q. Do you understand my question? Before Mr. Pfuhl spilled the paint, in your experience with the company, did you ever recommend that anybody else who had spilled paint be discharged?

A. He is about the only one that I can recollect that spilled paint like that.

Q. He spilled it twice?

A. Yes, he spilled it twice.

TRIAL EXAMINER SEAGLE: Would you say that you had recommended men for discharge who had continuously spilled paint?

THE WITNESS: I would.

TRIAL EXAMINER SEAGLE: You would?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: But you never actually did, is that it?

THE WITNESS: I never had occasion.

TRIAL EXAMINER SEAGLE: Let me ask you this: How many cases of paint spilling were there since January 9, 1938, when you first became chief mate of the "Fort Worth"?

THE WITNESS: Not many.

TRIAL EXAMINER SEAGLE: How many?

THE WITNESS: I can't recollect just how many. As far as I can recollect three times.

TRIAL EXAMINER SEAGLE: You do recollect three instances?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And whom did they involve, who spilled the paint?

THE WITNESS: William Burns, I think, spilled paint.

TRIAL EXAMINER SEAGLE: William Burns once spilled paint?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And who else?

THE WITNESS: That's all.

TRIAL EXAMINER SEAGLE: You said three. That is not three.

THE WITNESS: Three times.

TRIAL EXAMINER SEAGLE: William Burns is only one. You mean William Burns himself spilled paint three times?

THE WITNESS: No, sir. Paint was spilled three times.

TRIAL EXAMINER SEAGLE: By him?

THE WITNESS: No, altogether.

TRIAL EXAMINER SEAGLE: You say Burns spilled paint once?

THE WITNESS: Burns spilled paint once.

TRIAL EXAMINER SEAGLE: Who else spilled paint? You said there were three occasions?

THE WITNESS: And Pfuhl twice.

TRIAL EXAMINER SEAGLE: You are counting Pfuhl?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: I was referring to the spilling of paint by other persons than Pfuhl.

THE WITNESS: Just the once.

TRIAL EXAMINER SEAGLE: Just Burns?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Since the first of this year?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Are you sure of that, absolutely sure of that?

THE WITNESS: Well, now, I wouldn't say. Them things can happen, and they can be cleaned off without me finding it out, too.

TRIAL EXAMINER SEAGLE: So that, if the paint is cleaned up, you never find out about it?

THE WITNESS: Oh, no.

TRIAL EXAMINER SEAGLE: What's that?

THE WITNESS: Possibly not.

TRIAL EXAMINER SEAGLE: You do know that sometimes the paint is cleaned up without your finding out about it?

THE WITNESS: No, I wouldn't say I know.

TRIAL EXAMINER SEAGLE: Are you just giving me your guess about it?

THE WITNESS: It could be done.

TRIAL EXAMINER SEAGLE: I mean, you don't spend all your time watching the men while they are painting?

THE WITNESS: Oh, no.

TRIAL EXAMINER SEAGLE: When was it that Burns spilled this paint?

THE WITNESS: I think he spilled a can of aluminum paint when he was painting the hand rail.

TRIAL EXAMINER SEAGLE: The hand rail?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And when did this incident occur?

THE WITNESS: The same trip, southbound, as near as I can recollect?

TRIAL EXAMINER SEAGLE: What do you mean by the same trip?

THE WITNESS: The same voyage.

TRIAL EXAMINER SEAGLE: You mean on the voyage from Philadelphia——

THE WITNESS: From Philadelphia.

TRIAL EXAMINER SEAGLE (continuing): --to Houston?

THE WITNESS: To Houston, yes.

TRIAL EXAMINER SEAGLE: In other words, on the last voyage of the ship?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: He spilled the paint?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: He was also one of the men that went on strike, wasn't he?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You did not discharge him, did you?

THE WITNESS: No.

By MR. LUSTIG:

Q. The conversation you testified to, that you had with the captain with reference to Pfuhl and Warren, you say that occurred on the first day out of Houston, isn't that correct?

A. Yes, sir.

Q. In other words, that occurred on the 19th of July?

A. On the 19th of July, yes.

Q. You say that this conversation you had with Crassavaz, you had two or three days out of Houston, is that correct?

A. Yes, that is correct.

Q. In the conversation with Crassavaz was the first time you had ever found out about Pfuhl spilling this paint?

A. Yes.

Q. Is that right?

A. Yes.

Q. If that is so, then you were mistaken when you said you discussed this painting with the captain, weren't you?

A. Why, I talked to the captain about him spilling paint on the smokestack and his continuous carelessness.

Q. Didn't you speak to him about the spilling of the paint on the side of the ship, to the captain?

A. Well,——

Q. Yes or no?

MR. CHILDS: I object to yes or no. He can explain it.

MR. LUSTIG: It calls for a yes or no answer.

TRIAL EXAMINER SEAGLE: Certainly that question can be answered yes or no.

Did you speak to him about?

THE WITNESS: I spoke to him about spilling the paint on the side of the ship, yes.

MR. LUSTIG: That's all.

By MR. CASTIELLO:

Q. Did you speak to Mr. Sherry when you got in port?

A. Yes.

TRIAL EXAMINER SEAGLE: You say you did speak to Mr. Sherry?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: What did you talk to him about?

THE WITNESS: I told him about the refusal of the men to work down in Houston, and also about Joseph Warren and John Pfuhl.

TRIAL EXAMINER SEAGLE: Just tell us the whole conversation. What did you say to Mr. Sherry?

THE WITNESS: I told Mr. Sherry I thought it would be best if he let Joseph Warren go, due to his drinking.

TRIAL EXAMINER SEAGLE: That is not the first thing you said to Mr. Sherry, is it? Did you say "hello" to him when you first met him?

THE WITNESS: Yes, "Good morning."

TRIAL EXAMINER SEAGLE: Now, tell me what did he say?

THE WITNESS: He says, "What have you got to say?", or words to that effect. I can't just exactly recollect what he said.

TRIAL EXAMINER SEAGLE: What do you mean he said, "What have you got to say", about what?

THE WITNESS: Well, tell him what I wanted.

TRIAL EXAMINER SEAGLE: Then what did you say?

THE WITNESS: I told him about the men refusing to work down in Houston.

TRIAL EXAMINER SEAGLE: Did you tell him who it was, who had refused to work?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: What else did you say?

THE WITNESS: And I told him about Joseph Warren, about him drinking, and not showing up in time for work, and missing a day's work.

TRIAL EXAMINER SEAGLE: And what else?

THE WITNESS: And that I didn't care to have him on the ship any more.

TRIAL EXAMINER SEAGLE: And what else did you say?

THE WITNESS: And about John Pfuhl, I told him about his continuous carelessness, he didn't show no improvement, and that I wanted to get rid of him, too.

TRIAL EXAMINER SEAGLE: You wanted to get rid of him, too?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And what did Mr. Sherry say?

THE WITNESS: He says, "All right," he says, "I will see you later."

TRIAL EXAMINER SEAGLE: He said, "All right, I will see you later"?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Is that all he said then?

THE WITNESS: He said he would talk it over with the captain.

TRIAL EXAMINER SEAGLE: Didn't he ask you for any details as to what had occurred at Houston on July 18th?

THE WITNESS: Well, I told him about the men refusing to work.

TRIAL EXAMINER SEAGLE: Just what did you tell him in that connection?

THE WITNESS: I said, "Mr. Sherry, when we were down in Houston, the men refused to work."

TRIAL EXAMINER SEAGLE: Anything else?

THE WITNESS: Then what I said before, in regards to Joseph Warren and John Pfuhl.

TRIAL EXAMINER SEAGLE: Did you tell him that Warren had been the spokesman for the strikers in Houston?

THE WITNESS: Well, I can't quite recollect if I told him that or not.

TRIAL EXAMINER SEAGLE: Would you say that you had not?

THE WITNESS: No, I am not sure whether I did or not.

TRIAL EXAMINER SEAGLE: Did you also tell him that Pfuhl was one of the ringleaders of the strikers?

THE WITNESS: No, I didn't tell him that.

TRIAL EXAMINER SEAGLE: But you think you might have told him that Warren was the spokesman of the strikers?

THE WITNESS: I might have told him that.

TRIAL EXAMINER SEAGLE: You knew that to be a fact, didn't you?

THE WITNESS: Well, I can't quite recollect, I am not quite sure.

TRIAL EXAMINER SEAGLE: Didn't you testify that Warren spoke up for the strikers, and told you why it was they would not work?

THE WITNESS: But I am not so sure whether I told Mr. Sherry that.

TRIAL EXAMINER SEAGLE: But you knew that to be a fact?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Warren was the spokesman of the strikers?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And you may have told that to Mr. Sherry?

THE WITNESS: I may have told him.

TRIAL EXAMINER SEAGLE: What makes you forget whether you told him or not?

THE WITNESS: Well, I can't just remember everything I said.

TRIAL EXAMINER SEAGLE: You did discuss the strike with him?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Didn't you try to tell him as many of the details of what had occurred in Houston as you could?

THE WITNESS: I told him just what I said, that the men had refused to work.

TRIAL EXAMINER SEAGLE: Did you tell him everything that had happened at Houston?

THE WITNESS: Not everything.

TRIAL EXAMINER SEAGLE: What did you tell him? That is what I want to know. What did you leave out?

THE WITNESS: Well, I told him about the men refusing to work down there.

TRIAL EXAMINER SEAGLE: Didn't you go into details about which men had refused to work?

THE WITNESS: All of them, all the thirteen men.

TRIAL EXAMINER SEAGLE: The crew consisted of more than thirteen men, didn't it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: How many men were in the crew?

THE WITNESS: Altogether?

TRIAL EXAMINER SEAGLE: Altogether, yes.

THE WITNESS: On the ship?

TRIAL EXAMINER SEAGLE: On the ship.

THE WITNESS: Twenty-seven, including the captain.

TRIAL EXAMINER SEAGLE: How many were in your department, the deck department?

THE WITNESS: Seven.

TRIAL EXAMINER SEAGLE: Seven?

THE WITNESS: Seven seamen, unlicensed men.

TRIAL EXAMINER SEAGLE: When you say twenty-seven, are you referring to the licensed as well as the unlicensed?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: How many members of the crew were there who were unlicensed?

THE WITNESS: Nineteen.

TRIAL EXAMINER SEAGLE: Nineteen altogether?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Do you know how they were distributed?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: How many were in the deck department?

THE WITNESS: Seven unlicensed.

TRIAL EXAMINER SEAGLE: And how many in the engineering department?

THE WITNESS: Eight.

TRIAL EXAMINER SEAGLE: Eight?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: How many were in the steward's department?

THE WITNESS: Four.

TRIAL EXAMINER SEAGLE: So there were some men who had not gone on strike?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And the men who had not gone on strike had helped to work the ship?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: While the other men were on strike, is that correct?

THE WITNESS: Yes.

TRIAL EXAIMNER SEAGLE: And it was that that made possible the loading of the ship, was it not?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: So there were some men who had gone on strike, and some that had not?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did you tell Mr. Sherry which ones had gone on strike?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did you enumerate the strik‹ 's for him in this conversation?

THE WITNESS: In my department, in the deck department, I did.

TRIAL EXAMINER SEAGLE: You did?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And you told him about each one of the members in the deck department?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Who were the seven men in your department?

THE WITNESS: Who they are?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: Joseph Crassavaz.

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: And John Pfuhl.

TRIAL EXAMINER SEAGLE: Who else?

THE WITNESS: William Reeves.

TRIAL EXAMINER SEAGLE: Who else?

THE WITNESS: Joseph Warren.

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: William Burns.

TRIAL EXAMINER SEAGLE: Who else?

THE WITNESS: Henry Lathan, and Mike Dabot.

TRIAL EXAMINER SEAGLE: What is that last name?

THE WITNESS: Mike Dabot, D-a-b-o-t.

TRIAL EXAMINER SEAGLE: Then, with the exception of Mr. Dabot, all the men in your department had gone on strike, is that right?

THE WITNESS: They all refused to work except Dabot.

TRIAL EXAMINER SEAGLE: What did you tell Mr. Sherry about each one of these men?

THE WITNESS: I told Mr. Sherry about the behavior of Joseph Warren and John Pfuhl, but that the rest of them had been behaving good, their behavior before had been good, and that Mike Dabot did not join them in refusing to work.

TRIAL EXAMINER SEAGLE: Is that all you told Mr. Sherry about these men?

THE WITNESS: Yes, that's about all.

TRIAL EXAMINER SEAGLE: You wouldn't say that was all, would you?

THE WITNESS: About it.

TRIAL EXAMINER SEAGLE: You might have told him that Mr. Warren was the person with whom you had the conversation on the poop deck when the strike occurred?

THE WITNESS: I may have told him that.

TRIAL EXAMINER SEAGLE: You said on your direct examination that only Mr. Warren and Mr. Pfuhl had been ever guilty of any derelictions, and that the rest of the men had been behaving well, good, as you put it. What did you mean when you said the rest of the men, to whom were you referring?

THE WITNESS: The rest of the sailors, outside of Joseph Warren and John Pfuhl.

By MR. MCKAIG:

Q. In your department, you are talking about?

A. In my department.

TRIAL EXAMINER SEAGLE: That is what I am trying to get from the witness, not from the attorney.

Just what did you mean when you said the rest of the men?

THE WITNESS: I meant Joseph Crassavaz, William Reeves.

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: William Burns, Henry Lathan, and Mike Dabot.

TRIAL EXAMINER SEAGLE: Were you referring to any other members of the crew who were not in the deck department?

THE WITNESS: To Mr. Sherry, you mean?

TRIAL EXAMINER SEAGLE: No. When you made the statement that the rest of the men had been behaving good, were you referring to the crew as a whole?

THE WITNESS: Just to the deck department.

TRIAL EXAMINER SEAGLE: Only to the deck department?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: The engineering department is also under your general supervision as first mate, is it not?

THE WITNESS: It is under the supervision of the chief engineer.

TRIAL EXAMINER SEAGLE: But isn't the chief engineer subject to your orders as first mate of the ship?

THE WITNESS: Not when the captain is on board.

TRIAL EXAMINER SEAGLE: But when you are acting in place of the captain, as first mate, in charge of the ship, on a watch——

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE (continuing): —the chief engineer is subject to your orders, is he not?

THE WITNESS: When I am on watch, I would not give the chief engineer any orders without the captain's consent.

TRIAL EXAMINER SEAGLE: But if the captain did consent, you could give the chief engineer orders?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: When you are in charge of the ship, on a watch, you observe the working of the ship generally, don't you?

THE WITNESS: The deck department.

TRIAL EXAMINER SEAGLE: But don't you observe what happens anywhere else? In the engineering department, or the stewards' department?

THE WITNESS: I have enough to observe the deck department.

TRIAL EXAMINER SEAGLE: It would not be reported to you if anything went wrong in either of the other departments?

THE WITNESS: Well, if something goes radically wrong, they will report it.

TRIAL EXAMINER SEAGLE: They do report it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: During this voyage from Houston back to Philadelphia, did you receive any report whatsoever indicating that anything was wrong in any department of the ship?

THE WITNESS: No, nobody told me anything was wrong.

TRIAL EXAMINER SEAGLE: During the period the men refused to work, on July 18th, did any of them attempt to prevent any officer of the ship from performing his duty?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Or interfere with the operation of the ship?

THE WITNESS: Not in the deck department, no.

TRIAL EXAMINER SEAGLE: Did you observe any interference in any other department?

THE WITNESS: No, I didn't observe any.

TRIAL EXAMINER SEAGLE: I mean, you personally, did you observe any interference anywhere else?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Did you observe the men who were sitting on the poop deck leave the ship at any time during that day, referring to the day of the strike?

THE WITNESS: Why, in the evening, about seven o'clock, they all left the poop deck, as near as I can judge, they left the poop deck.

TRIAL EXAMINER SEAGLE: Had anyone of the strikers left the ship before then?

THE WITNESS: Not that I recall.

TRIAL EXAMINER SEAGLE: For any reason?

THE WITNESS: Not that I know of.

TRIAL EXAMINER SEAGLE: But at 7 p. m., you say you did see them all leave, in a body?

THE WITNESS: I didn't count them. I wouldn't say exactly, but there was a bunch of them left the ship, and were on the dock.

TRIAL EXAMINER SEAGLE: And you observed them doing that, did you?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Do you know how it came about that they left the ship?

THE WITNESS: No, I didn't know.

TRIAL EXAMINER SEAGLE: When was it they came back? Did you observe that?

THE WITNESS: In about ten minutes.

TRIAL EXAMINER SEAGLE: Did you ask them then why they had left the ship?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Did you say you were present when the shipping commissioner talked to the crew?

THE WITNESS: I wasn't back aft on the poop deck, no.

TRIAL EXAMINER SEAGLE: You didn't hear anything the shipping commissioner said to the crew?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Did you personally, or any of the other officers of the ship in your presence, ever order the crew to leave the ship, to get off the ship?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: What?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Is it true that during the voyage the crew is required to stay on the ship?

THE WITNESS: No. When the ship is in port?

TRIAL EXAMINER SEAGLE: Yes; unless they are excused, of course. My question is this: When the ship is in port, are the members of the crew permitted to leave the ship without obtaining permission from some officer of the ship?

THE WITNESS: After working hours they can leave the ship.

TRIAL EXAMINER SEAGLE: After working hours they can leave the ship without permission?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: What are considered working hours when a ship is in port?

THE WITNESS: Eight hours.

TRIAL EXAMINER SEAGLE: From when?

THE WITNESS: Eight in the morning to twelve at noon, and from one in the afternoon to five in the evening.

TRIAL EXAMINER SEAGLE: Do you mean by that they are permitted to leave the ship between twelve and one?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Don't they have their meals on the ship?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And the ship, while it is in port, is their living quarters, is it not?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You say Mr. Warren was drunk on one occasion, was he? Or, more than one occasion?

THE WITNESS: More than one occasion.

TRIAL EXAMINER SEAGLE: How many occasions was that?

THE WITNESS: Three, that I am sure of.

TRIAL EXAMINER SEAGLE: Three that you are sure of?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Will you tell me when these occasions were?

THE WITNESS: The first trip he made, while laying down in Houston.

TRIAL EXAMINER SEAGLE: When was that, what time?

THE WITNESS: That was about three weeks before the 18th of July.

TRIAL EXAMINER SEAGLE: That was the first time that Warren was drunk?

THE WITNESS: Yes, that was his first trip on the ship.

TRIAL EXAMINER SEAGLE: How many trips did he make altogether?

THE WITNESS: Two.

TRIAL EXAMINER SEAGLE: And on his first trip he was drunk once?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Or more than once?

THE WITNESS: Once.

TRIAL EXAMINER SEAGLE: When did the other two occasions occur?

THE WITNESS: In Philadelphia, after he was signed on.

TRIAL EXAMINER SEAGLE: Yes. Was that on the first trip or the second trip?

THE WITNESS: That will be the second trip.

TRIAL EXAMINER SEAGLE: When he signed up for the second trip?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And when was the third occasion?

THE WITNESS: On July 17th, on Saturday.

TRIAL EXAMINER SEAGLE: The day before the strike?

THE WITNESS: Yes, the day before.

TRIAL EXAMINER SEAGLE: How did you come to find out about his being drunk on each one of these occasions? Did you personally observe him, or did somebody tell you about it?

THE WITNESS: I personally observed him.

TRIAL EXAMINER SEAGLE: On each one of these occasions?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: All three occasions?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: I take it, that he did his drinking while he was off the boat? There is no liquor permitted on board?

THE WITNESS: He done some drinking while on the boat, too, also off the boat.

TRIAL EXAMINER SEAGLE: When was it that he drank on the boat, and when was it that he drank off the boat?

THE WITNESS: He drank off the boat the first time down in Houston.

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: And also in Philadelphia.

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: And he was drunk on the boat in Houston on the 17th.

TRIAL EXAMINER SEAGLE: On the 17th?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Just how did that come about? I am referring to the occasion when he drank on the ship.

THE WITNESS: They have beer on the ship.

By MR. CASTIELLO:

Q. Do they sell it on the ship? Beer is sold on the ship?

A. Yes.

TRIAL EXAMINER SEAGLE: It is sold on the ship?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: By the company?

THE WITNESS: No, sir; by the steward.

TRIAL EXAMINER SEAGLE: Then he was drinking beer, was he?

THE WITNESS: Yes, as far as I know.

TRIAL EXAMINER SEAGLE: Well, that is permitted, isn't it?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Any member of the crew can drink beer?

THE WITNESS: Not too much.

TRIAL EXAMINER SEAGLE: How much beer had he had?

THE WITNESS: Well, when he gets so he gets loud, and singing, and we have to go and ask him to be quiet, I think that is too much.

TRIAL EXAMINER SEAGLE: Is he the only one who was drinking beer on that occasion?

THE WITNESS: I observed him specially because he was in my department.

TRIAL EXAMINER SEAGLE: I am asking you to answer my question. Did you see anybody else drinking beer that day, whether in your department or not, any member of the crew?

THE WITNESS: Well, I can't say I did.

TRIAL EXAMINER SEAGLE: What?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Is it unusual for the members of the crew to drink beer on the ship?

THE WITNESS: It is not unusual to drink beer, but it is unusual to get drunk.

TRIAL EXAMINER SEAGLE: Doesn't it require the drinking of a great deal of beer before you get drunk? It is a much more difficult feat, isn't it, than getting drunk on hard liquor? Isn't it?

THE WITNESS: I think so. I find it that way.

TRIAL EXAMINER SEAGLE: Do you know how much Mr. Warren had been drinking that day?

THE WITNESS: No, I don't know how much.

TRIAL EXAMINER SEAGLE: You didn't actually see him while he was drinking the beer, did you?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: When you say that he was drunk, you were judging merely from his behavior, his appearance?

THE WITNESS: From his behavior and appearance.

TRIAL EXAMINER SEAGLE: Was he able to walk?

THE WITNESS: He was able to walk.

TRIAL EXAMINER SEAGLE: Was he able also to work?

THE WITNESS: No, he wouldn't have been able to work. This was in the afternoon.

TRIAL EXAMINER SEAGLE: Was he on duty at the time?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: He was not?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: So that his drinking did not interfere with his duties in any way, did it?

THE WITNESS: No, not that day.

TRIAL EXAMINER SEAGLE: On the occasion when he drank in Philadelphia, I believe you said it was off the ship, is that correct?

THE WITNESS: He had apparently done his drinking off the ship.

TRIAL EXAMINER SEAGLE: And he came on the ship drunk, is that it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: How drunk was he? Was he able to walk onto the ship?

THE WITNESS: Well, he must have been. I didn't see him come aboard.

TRIAL EXAMINER SEAGLE: You didn't see him? How did you know he was drunk?

THE WITNESS: I came aboard a quarter of nine in the morning, and I found that he wasn't working, and I went back aft in the forecastle and I found him in his bunk.

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: And he appeared to be pretty well drunk, then.

TRIAL EXAMINER SEAGLE: And did you talk to him at that time?

THE WITNESS: I got him up.

TRIAL EXAMINER SEAGLE: Was he supposed to be on duty at that time?

THE WITNESS: Yes, sir, he was supposed to have went to work at eight o'clock that morning.

TRIAL EXAMINER SEAGLE: And did he get up?

THE WITNESS: He got up, yes, sir.

TRIAL EXAMINER SEAGLE: And did he go on duty?

THE WITNESS: He went on duty.

TRIAL EXAMINER SEAGLE: Did he perform his duties satisfactorily on that occasion?

THE WITNESS: Well, not very satisfactory.

TRIAL EXAMINER SEAGLE: Did anything happen?

THE WITNESS: Oh, no, nothing happened.

TRIAL EXAMINER SEAGLE: Did anything happen on this previous occasion when he came on the ship drunk?

THE WITNESS: Then I told him to go to bed, to turn in.

TRIAL EXAMINER SEAGLE: Was he on duty on that occasion?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: When did he come on the ship?

THE WITNESS: About 9:30 in the morning.

TRIAL EXAMINER SEAGLE: And when was he supposed to go on duty?

THE WITNESS: Eight in the morning.

TRIAL EXAMINER SEAGLE: And he was too drunk to go to work on that occasion?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And how long did he remain away from duty?

THE WITNESS: All day.

TRIAL EXAMINER SEAGLE: Was he docked? Was any deduction made from his wages for that period?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Is Warren the only member of the crew who has ever come on drunk in your experience on the "Fort Worth"?

THE WITNESS: Oh, it may happen.

TRIAL EXAMINER SEAGLE: Tell us, how often does it happen?

THE WITNESS: It wouldn't happen very often, because I wouldn't have a man that it happened to right along.

TRIAL EXAMINER SEAGLE: But it has happened, I take it?

THE WITNESS: Then I let him go.

TRIAL EXAMINER SEAGLE: Has it happened that other men have been drunk?

THE WITNESS: Not on this ship, it hasn't happened.

TRIAL EXAMINER SEAGLE: But, in your experience as a sea-going man, is it unheard of that a member of a crew is drunk sometimes?

THE WITNESS: Oh, no. It is quite common that sailors drink.

TRIAL EXAMINER SEAGLE: It is quite common?

THE WITNESS: It is quite common.

TRIAL EXAMINER SEAGLE: Almost all of them drink, don't they?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And sometimes one of them is so drunk he can't work?

THE WITNESS: That happens.

TRIAL EXAMINER SEAGLE: And hasn't it, as a matter of fact, happened in your experience while on the "Fort Worth"?

THE WITNESS: That is the only one.

TRIAL EXAMINER SEAGLE: Do you mean to say that Warren is the only man that ever came on board drunk?

THE WITNESS: Well, repeated it.

TRIAL EXAMINER SEAGLE: But I am asking you whether any other man on any other occasion was drunk.

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Didn't you just tell me a minute ago that it does happen, but not repeatedly?

THE WITNESS: I can't recall that.

TRIAL EXAMINER SEAGLE: I am not asking you whether there was any other man who was drunk three times. I am asking you whether there was any other man who was ever drunk when he came on board, or on the ship.

THE WITNESS: Not on "The Fort Worth," not since I been here now.

TRIAL EXAMINER SEAGLE: You want that to stay as your answer?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Despite the fact that sailors drink quite commonly?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Is it possible that some men may have come on board drunk while you didn't observe them?

THE WITNESS: That is possible, yes.

TRIAL EXAMINER SEAGLE: That's all.

RE-DIRECT EXAMINATION.

By MR. CHILDS:

Q. You were asked on cross-examination as to what was going on in the engine room on July 18, 1938. Were you down in the engine room——

A. No.

Q. (Continuing): —on that day?

A. No. I have enough to take care of in my own department, on deck.

Q. You testified that you had a conversation with the captain in which you referred to the spilling of paint by Warren. Or rather, by Pfuhl?

A. By Pfuhl, yes, sir.

Q. In that conversation with the captain, how many times did you tell him Pfuhl had spilled paint?

A. I told him about this one time on the smokestack, and that there had been paint spilled on the outside of the ship there, but at that time I wasn't sure who had done it.

Q. You were not sure at that time who had done it?

A. No.

Q. So that in that conversation with the captain, you did not judge Pfuhl with spilling paint, is that right, on the side of the ship?

A. No, sir.

Q. Referring to what you said about Edward Smith, the mess boy, under whose supervision does this mess boy Smith work?

A. Under the steward's supervision.

Q. He is under the direct supervision of the steward?

A. Yes.

Q. And what is the name of the steward?

A. Alfred Kuhtreiber.

Q. Can you spell it for the record?

A. Alfred K-u-h-t-r-e-i-b-e-r.

Q. What was the approximate time when you say that Warren was drinking beer on the ship, on what day?

A. Saturday, in the afternoon.

Q. Do you know whether he had partaken of any intoxicating beverage before he got on board ship?

A. I don't know.

MR. CHILDS: That's all.

TRIAL EXAMINER SEAGLE: Was he on duty at the time he was drinking that beer?

THE WITNESS: He wasn't on duty in the afternoon.

TRIAL EXAMINER SEAGLE: Any further questions?

MR. CASTIELLO: Yes.

RE-CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. Isn't it a fact that you also drink beer?

A. I drink beer.

Q. Yes. And you drink it to excess, too, on occasions?

A. I don't.

Q. What did you mean by telling us that you find it that way, speaking about the difference between drinking whiskey and beer?

A. Well, now, I find that whiskey is stronger than beer.

Q. Sure. And you get drunk faster on whiskey, don't you?

MR. CHILDS: I object to this, as immaterial.

TRIAL EXAMINER SEAGLE: The objection is overruled.

Have you drunk whiskey? That is the question.

THE WITNESS: Yes, I have.

By MR. CASTIELLO:

Q. And you have found you get drunk sooner on whiskey than you do on beer? Is that what you want to tell us?

MR. CHILDS: I object to the question.

TRIAL EXAMINER SEAGLE: The objection is overruled.

MR. McKAIG: This is a witness, not a walking dictionary.

MR. CASTIELLO: He apparently has taken the position he can tell when another man is drunk. I want to know how he qualifies himself to be able to say so, unless it is by personal experience.

TRIAL EXAMINER SEAGLE: The objection has been overruled.

MR. CASTIELLO: Will you read the question?

(Question read.)

A. Yes.

By MR. CASTIELLO:

Q. And you know that from personal experience, don't you?

A. Not necessarily.

Q. It is not uncommon for you to get drunk, is it?

MR. CHILDS: I object to that as scandalous, as well as immaterial.

TRIAL EXAMINER SEAGLE: The objection is overruled.

A. Well, I don't get drunk.

By MR. CASTIELLO:

Q. Tell us the truth, that's all.

A. I don't get drunk, so that I can't do my work.

Q. Did Warren ever get drunk in a worse degree than you did?

A. Yes, sir.

MR. SHERRY: I object to that.

By Mr. Castiello:

Q. You say "yes"?

A. Yes.

Q. How were you able to determine that?

A. Well, when a man can hardly stand up, staggers.

By Mr. McKaig:

Q. In short, you drink temperately and Warren drinks to excess? That is what you mean to say, isn't it?

A. Yes.

Mr. Castiello: I move to strike that.

Mr. McKaig: I just want to ask him a question.

Mr. Castiello: Just a minute. I am not through.

Trial Examiner Seagle: I don't believe Mr. Castiello is through.

By Mr. Castiello:

Q. Isn't it a fact that you spoke to Mr. Crassavaz on more than one occasion about the strikers, after this refusal to work, on July 18th?

A. I didn't speak to Mr. Crassavaz about the strikes at all.

Q. Didn't you inquire of him who were the leaders in the strike?

A. I did not.

Q. Of course, you told Mr. Sherry who were the leaders, did you not?

A. I am not quite sure if I did or not.

Q. You may have?

A. I may have, yes.

Q. Did you fire Pfuhl and Warren before or after you spoke to Mr. Sherry?

A. After I spoke to Mr. Sherry.

Q. How long after?

A. About an hour.

Q. How long after the men were fired did men come on board the ship to take the places of those who had been fired and those who had struck that day?

A. The next day.

Q. Do you know when they had been hired?

A. That morning.

Q. Which morning? July 25th?

A. That would be July 26th, Tuesday morning.

Q. Do you know which morning I am speaking of? When did the ship come to Philadelphia?

A. On Monday.

Q. And you say they were hired on Tuesday?

A. At noon, yes.

Q. All you know is they came on the ship on Tuesday?

A. I know that they were hired on Tuesday.

Q. How do you know that?

A. I am speaking for the deck department, the sailors, because I was out on the deck with Mr. Sherry when he hired those men.

Q. Did you hear Mr. Sherry speaking to the men?

A. I did, yes.

Q. Did he make any inquiries to the men about other things than their ability to do the work?

A. No, sir.

Q. Do you know what I mean?

A. Yes, sir.

Q. Can you tell us just what Mr. Sherry had to say to the men who were being hired?

A. Well, he asked the man's name, and he asked him to show his papers, and told him that there was a job for him if the man wanted it, and then he asked me if I would take the man, if he was satisfactory.

Q. Is that all that was said?

A. About all, yes.

Q. Didn't Mr. Sherry ask them what union they belonged to?

A. No, sir.

Q. Are you certain about that?

A. I am sure about that.

Q. Isn't it a fact that the Southern Steamship Company doesn't like to sail with union men?

A. That is not a fact. They have got union men on the ship now.

Q. How do you know they have union men on the ship?

A. They told me so.

Q. You have inquired, and they told you so, is that it?

A. No, sir; I didn't inquire.

Q. Do you mean to tell me they came up and voluntarily told you they were members of the union?

A. Yes, sir; one man did.

Q. Tell me who this man is.

A. Joseph Crassavaz told me.

Q. That's right. Joseph Crassavaz is now back at work, isn't he?

A. Yes, sir.

Q. Do you know whether he still belongs to the union?

A. I am not sure whether he belongs to the union now or not.

Q. You said you are sure he did belong to the union because he told you?

A. Yes, sir; that he had joined the union.

Q. Tell me, how did you happen to have the conversation with Mr. Crassavaz about his belonging to the union?

A. Why, he told me that down in Houston that day.

Q. What day?

A. On July 18th.

Q. Just how did he happen to come up and tell you this?

A. Well, he said he had joined the union the night before, or something like that.

Q. Did you ask him if he belonged to the union?

A. No, sir; I did not ask him.

Q. Do you mean to tell me he just came over to you and said, "Mr. Helland," or "Chief," "I joined the union the night before"?

A. Yes, he did.

Q. How did the conversation lead up to this statement that you say Mr. Crassavaz made?

A. I asked him why he was not working.

Q. So you opened the conversation, didn't you?

A. Yes.

Q. All right. Go ahead.

A. And that is when he told me that he had to stay with the rest of them, that he had joined the union.

Q. And what did you tell him?

A. I didn't tell him anything.

Q. Do you know why Mr. Crassavaz was taken back?

A. Because he is a very good man.

Q. And he gave you some information on Mr. Pfuhl, didn't he, about spilling the paint?

A. Yes, he did.

Q. And he was a valuable man to have on board the ship because he would give you information, is that not right?

A. No, that is not right.

By Mr. McKaig:

Q. He is the boatswain, isn't he?

A. He is the boatswain.

Trial Examiner Seagle: Who was it that said, "He is the boatswain"?

Mr. McKaig: I, sir.

Trial Examiner Seagle: Who are you?

Mr. McKaig: I am of counsel.

Trial Examiner Seagle: Oh, I am sorry. I thought it came from the rear of the room. However, I do not see that such comments by counsel are necessary, either.

Mr. McKaig: The examination has been so extensive. I was merely trying to expedite it.

TRIAL EXAMINER SEAGLE: If you have an objection, I suggest you make it in legal form.

By MR. CASTIELLO:

Q. After these men all left the ship on July 18th, about seven o'clock—do you remember you testified on that?

A. Yes.

Q. They came back about ten minutes later?

A. I should say about ten minutes later.

Q. Then the ship sailed about nine o'clock?

A. Yes.

Q. Do you know why the men came back to work and left the strike?

A. No.

Q. Didn't you inquire?

A. No.

Q. Do you mean to tell me you were not even interested in knowing why the men were now abandoning their strike and coming back to work?

A. I didn't inquire.

Q. Weren't you even curious about that?

A. I might have been curious, but I had enough then to get the men to work and get the work done.

Q. Didn't you get in conversation with the captain or one of the officers and ask, "What ended the strike?" or something to that effect?

A. No, I didn't.

Q. So you didn't inquire at all?

A. No.

Q. And that is what you want your testimony to be now, that you never inquired why the strike was ended?

A. Yes.

MR. CASTIELLO: That's all.

TRIAL EXAMINER SEAGLE: You mean you never inquired at any time during the voyage, on the way from Houston to Philadelphia?

THE WITNESS: No, I didn't inquire.

TRIAL EXAMINER SEAGLE: You didn't have any occasion to talk to anybody?

THE WITNESS: I didn't inquire of anybody.

TRIAL EXAMINER SEAGLE: The captain, or any of the officers? I am waiting for your answer.

THE WITNESS: I didn't inquire of anybody why it was, no.

TRIAL EXAMINER SEAGLE: If you didn't inquire, you should know that, shouldn't you?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: It shouldn't take you a long time to determine that. You never spoke to anybody about the strike, or why it had ended, at any time during the voyage? Is that your testimony?

THE WITNESS: I spoke to the captain about the strike.

TRIAL EXAMINER SEAGLE: All right. Now, you did speak to the captain?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did you understand my previous question? I said any of the officers. The captain is an officer, isn't he?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: What was this conversation you had with the captain?

THE WITNESS: Well, it was in regards to the behavior of the crew.

TRIAL EXAMINER SEAGLE: All right. Tell us what this conversation was, just what did you say to the captain, and what did the captain say to you?

THE WITNESS: I told him about Joseph Warren, about his drinking, and failure to work, and about John Pfuhl, about his continuous carelessness.

TRIAL EXAMINER SEAGLE: And what else did you say?

THE WITNESS: I recommended that those men should be let go when we got to Philadelphia.

TRIAL EXAMINER SEAGLE: Didn't you discuss with the captain at all the causes of the strike, or why the strike had been terminated? Are you going to answer my question, or aren't you?

THE WITNESS: No, I didn't. I can't recall discussing with the captain why the strike was ended, I can't recall asking him anything like that.

TRIAL EXAMINER SEAGLE: Did you mention the strike to him in any connection?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: All right. What did you say to him about it?

THE WITNESS: I told him that the men had refused to work.

TRIAL EXAMINER SEAGLE: What was that?

THE WITNESS: I told him that the men had refused to work, down in Houston.

TRIAL EXAMINER SEAGLE: You did talk to the captain about that?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: What did you say in that connection?

THE WITNESS: I thought it was a very foolish thing for the men to do.

TRIAL EXAMINER SEAGLE: You told that to the captain?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did you tell him what various men had done during the strike?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Tell us what you told him about that.

THE WITNESS: I told him about Joseph Warren being the spokesman.

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: And that each one had refused separately to go to work.

TRIAL EXAMINER SEAGLE: Did you mention anybody else in particular, apart from Warren, in connection with their activities during the strike?

THE WITNESS: Well, all of them, that they refused to work, separately.

TRIAL EXAMINER SEAGLE: You mentioned Warren particularly, you say?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: I am asking you whether you mentioned anybody else particularly? You didn't have to tell the captain who had gone out on strike, he knew that, didn't he?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: That was not news to the captain, was it?

THE WITNESS: Oh, no, no.

TRIAL EXAMINER SEAGLE: You said you did mention others. What did you say about them?

THE WITNESS: About John Pfuhl, his previous behavior.

TRIAL EXAMINER SEAGLE: I am not talking about his previous behavior. What did you say about their activities in connection with the strike?

THE WITNESS: That they all refused to work.

TRIAL EXAMINER SEAGLE: And that is all you said?

THE WITNESS: Yes, about all.

TRIAL EXAMINER SEAGLE: I want to know all that you said, not about all.

THE WITNESS: I told him about Mike Dabot, that he wasn't with them.

TRIAL EXAMINER SEAGLE: All right. What else did you tell him?

THE WITNESS: That I asked each one of them to go to work, and I told them what I wanted them to do.

TRIAL EXAMINER SEAGLE: Did you say anything about Pfuhl in connection with the strike?

THE WITNESS: About Pfuhl?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Have you told us everything you can remember about what you said?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: In this conversation did the captain say anything at all about why the men had gone back to work?

THE WITNESS: He said that he had had a conversation with the lawyers.

TRIAL EXAMINER SEAGLE: Tell us what the captain said about that?

THE WITNESS: And when he came down on the dock, the two union delegates said they wanted to see the crew, that they had a message for them.

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: So then he called the crew out, to let the delegates talk to them.

TRIAL EXAMINER SEAGLE: What else did the captain say?

THE WITNESS: Whatever was said between them, I don't know.

TRIAL EXAMINER SEAGLE: Wasn't the captain present at this conference between the agents of the company and the agents of the union?

THE WITNESS: He was on the dock.

TRIAL EXAMINER SEAGLE: Did you see him on the dock?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did you see him talk to the delegates on the dock?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: In this conversation, you were discussing with the captain what had happened on the dock, were you not?

THE WITNESS: The captain was telling me.

TRIAL EXAMINER SEAGLE: What did the captain tell you about the understanding under which the men had gone back to work?

THE WITNESS: He didn't tell me anything about what understanding they had.

TRIAL EXAMINER SEAGLE: Did you ask him?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: In other words, the captain told you only part of the story, is that it?

THE WITNESS: He told me just that.

TRIAL EXAMINER SEAGLE: And he didn't tell you anything else?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Weren't you curious to know under what conditions the men had gone back to work?

THE WITNESS: Well, yes.

TRIAL EXAMINER SEAGLE: You are sure the captain said nothing about that?

THE WITNESS: The captain said just what I said.

TRIAL EXAMINER SEAGLE: That's all.

By MR. LUSTIG:

Q. Is it customary for you to consult Mr. Sherry before you discharge any of your men?

A. I consult Mr. Sherry and the captain, also, before I discharge anybody.

Q. That has been your practice?

A. Yes.

Q. (Continuing.) —all the time?

A. Yes.

Q. Did you discharge all of the men on the 25th?

A. Two.

Q. You only discharged the two?

A. Yes.

Q. In your department?

A. Yes.

Q. Did you discuss with Mr. Sherry the other men who were discharged?

A. No, sir.

Q. Who told you to discharge these two men? Mr. Sherry?

MR. CHILDS: I want to object at this time to these questions, as repetition, as an extension of cross-examination that is oppressive.

TRIAL EXAMINER SEAGLE: Objection sustained. I don't see any reason for asking the questions. This ground has already been covered.

Do you have any further questions, Mr. Childs?

MR. CHILDS: Just one minor point.

RE-DIRECT EXAMINATION.

By MR. CHILDS:

Q. My attention has been called to the fact, Mr. Helland, that you have spoken about incidents occurring at Houston on Saturday, the 17th of July. Now, as a matter of fact, the 17th of July was Sunday, was it not? Look at this diary.

A. Well, I have made a mistake there. It was the 16th, on Saturday.

Q. So, when you refer to certain things happening as to Mr. Warren's conduct, on Saturday the 17th of July, you are referring to his conduct on Saturday, the 16th of July, is that right?

A. Yes, sir, that's right, Saturday the 16th of July.

MR. CHILDS: No further questions.

MR. CASTIELLO: Just one more question.

RE-CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. If these men who went on strike that day went back into the company, don't you believe they would be competent for their work?

MR. MCKAIG: I object to that question. He is asking the witness to express an opinion, and we are trying to get the facts.

TRIAL EXAMINER SEAGLE: Questions of competence are always questions of opinion. The objection is overruled.

MR. CASTIELLO: Will you read the question?

(Question read.)

MR. CASTIELLO: Will you strike that? I have nothing further.

TRIAL EXAMINER SEAGLE: Have you any further questions?

MR. CHILDS: No further questions.

(Witness excused.)

TRIAL EXAMINER SEAGLE: We will have a recess for a few minutes.

(A short recess was thereupon taken.)

TRIAL EXAMINER SEAGLE: The hearing will come to order.

LAURENCE A. ROBINSON, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CHILDS:

Q. What is your full name?
A. Laurence A. Robinson.
Q. What is your age?
A. Thirty-one years old.
Q. Where do you live?
A. 23 Hess Avenue, Woodbury, New Jersey.

Q. How long have you been employed by the Southern Steamship Company?

A. Almost nine years.

Q. And what is your present position with the company?

A. Second assistant engineer, "City of Fort Worth."

Q. Do you have a second assistant engineer's license?

A. Yes, sir.

Q. When did you obtain that license?

A. I obtained the second assistant engineer's license in 1930, but I have been a licensed engineer since 1929.

Q. Were you acting as second assistant engineer on the ship on July 18, 1938?

A. Yes, sir.

Q. Where was the ship on that day?

A. We was docked at Houston, Texas.

Q. Were you on duty in any part of the night July 17-July 18, 1938?

A. Yes, sir, I was on on Sunday from about four o'clock until midnight. I came off at midnight.

Q. Did you go to the engine room of the ship on the morning of July 18, 1938?

A. Yes, sir, I went down in the engine room along about seven-thirty, I came out of my room, and on my way down to the engine room I noticed that steam wasn't on the deck.

Q. Will you explain to the Examiner what you mean by steam not being on the deck?

A. Well, there was no steam on deck for the working of the cargo winches.

Q. How could you discover that?

A. Well, you don't have to go right down to the winches and see it. There is always a certain leakage of steam around the valve stems and rods, and one thing and another, and you can detect whether the steam is on deck or not.

Q. Did you then go to the engine room?

A. Yes, I went directly to the engine room.

Q. Who did you find in the engine room?

A. I found Elmer Fergeson and John Tracey standing on the ventilator down there.

Q. What position does Elmer Fergeson have?

A. He is fireman.

Q. How about John Tracey?

A. He is an oiler.

Q. Was this sailing day?

A. Yes, it was a sailing day from Houston.

Q. What do you do, as far as your department is concerned, in preparation for sailing?

A. On sailing day from any port, it is my duty to go down into the engine room, and I generally clean a boiler, which I done this trip, and, on sailing day, that boiler is supposed to be all ready to cut in.

What I mean by that is, the steam is supposed to be raised and somewhere equal to the pressure on the other boiler, so I can cut it in.

Q. What time is the steam put on, on sailing days?

A. On where? The deck?

Q. Yes.

A. The steam is put on deck somewhere between seven and eight o'clock, in order to give the engines a chance to warm up for the working of the cargo.

Q. Did you have any conversation with Fergeson or Tracey when you went to the engine room?

A. Yes, sir.

Q. Just tell the Examiner what you said to them, and what they said to you.

A. Well, I asked John Tracey what was the trouble, there was no steam on deck.

Q. What did he say to you?

A. So John Tracey told me that he was on strike, and he says there would be no steam.

Q. Go ahead. What did you say to him?

A. So then I asked him, I said, "Well, why?"

So he told me that he had been up to the union hall, and that they had voted on going on strike, and that they

had voted that they wouldn't give no steam for the working of the cargo.

In other words, he said they had voted that no cargo was to come aboard the ship that day.

Q. What did you say to him?

A. So then I told him, I says, "Well, that's fine," and that's all that was said at that moment.

Q. When you say you said it was fine, did you say anything else to him?

A. I told him, "That's fine, John," I said, "But you can't do that."

I says, "You know you are under articles now," and I says, "you can't go on strike, you have to live up to your contract or agreement," and I told him that if they would pull anything like that, it ought to be pulled in Philadelphia, on account of that was the proper heads of the company to handle anything like that. I believe that was all that was said at that time.

Q. This conversation you last had, was that with Tracey or Fergeson?

A. That was John Tracey.

Q. Were the fires on when you got down in the engine room?

A. That is in a different part of the ship, that is in the fire room, that is not in the engine room.

Q. Did you go into the fire room?

A. Yes, as soon as I left them I went directly into the fire room.

Q. Tell the Examiner what occurred there, and what was said.

A. I went in the fire room, and I found the fireman sitting down on the box.

Q. What was his name?

A. His name was Alex Braun.

Q. Go ahead.

A. I asked him, I said, "What is the trouble, Alex?"

He just shrugged his shoulders in a gesture, and he said, "I don't know."

I looked, I seen there was no fires. I asked him, I says, "What's the matter with the fires?"

He says, "I don't know." And from there, I went on to the engine room.

Q. What would be the consequence of having no fires on this ship?

A. Well, without fires——

MR. LUSTIG: Wait a minute. I am going to object to that question, as asking for a conclusion.

TRIAL EXAMINER SEAGLE: The objection is overruled.

A. Well, without fires, it would be impossible to still maintain your steam pressure. In other words, just as soon as they start working cargo, they would have a great loss of steam right there and then, and, in order to keep the auxiliaries running, such as the fire pumps and the sanitary pump, the fresh water pump, the feed water pumps, and the fuel pumps, you must have fires in your boiler, because your pressure is steadily advancing.

By MR. CHILDS:

Q. Is there any utility of a fire, in connection with protection against fire, should a fire occur on the ship?

A. Why, the only thing we have is an emergency fire extinguisher, but that would not be capable of taking care of any serious fire, that would be just merely sort of a first aid, that's all.

Q. Tell us how you use the steam, in order to furnish adequate fire protection to the ship.

A. You see, if there was a fire in any one of the holds, or in a shelter deck, they have what they call the steam smothering system for putting out fires, and the steam is run through pipes, and there is just a jet of steam going into these holds, and it is quite a bit of steam going through there, and if ever they had to be used, it would be worse than the steam on deck, as far as taking your pressure away, because all your pipes is just open ends.

Q. After you had seen Braun and Fergeson, did you have any further conversation with Tracey?

A. Yes. I went right out to the engine room, and Braun had followed me, so when I got out there, there was all three out there, John Tracey, Alex Braun and Elmer Fergeson.

So I asked Tracey if he was going to put the steam on deck, so he told me no, he said he was on strike.

So I told him, I says, "Well, that's fine." I says, "I am not on strike."

So I told John Tracey that I was going to put the steam on deck. In fact, I told him that I was the second assistant engineer on the ship, and they were going to look to me for steam, and that I was going to give it to them.

Q. What did Tracey say when you said you were going to put steam on deck?

A. So he told me, he says, "You had better not. You will be sorry."

Q. What did you say to him?

A. Then I told him, I says, "Well, that remains to be seen."

Q. Did you put steam on deck?

A. Yes, I went on up on the next grating, and put steam on deck.

While I was up there, he comes running up there, and I was over at the manifold, where the steam valves are, and he asked me, he said, "What are you going to do?"

So I told him I was putting steam on deck. So he told me, he says, "Go ahead," he says, "you won't have none after eight o'clock."

So then I asked him, I said, "Why?"

So he says, "You won't have no firemen."

So I told him, "Well," I said, "I intend to fire the boilers myself."

Q. And did you fire the boilers yourself?

A. Yes, I went back down, and I put the fires under the boiler, and about the time that I got them all lit off, he

comes running out of the fire room there, and asked me if I was going to be responsible, so I told him, "Why, certainly," I said, "I am second engineer of the ship here," and I says, "If I am not responsible, who will be?"

So John told me, he says, "That's all I want to know," so he left.

Q. Did you have any help in tending the fires on that morning, and that day?

A. Yes, I had help; in the morning, along about, I guess it was 11:20, the third assistant relieved me for dinner.

Q. Were you back on the poop deck when the United States shipping commissioner came aboard?

A. Yes, sir; I was back there.

Q. Did you hear him address the men?

A. Well, I wouldn't say that I heard him address the men, because, after I had gotten back there, he had already got under way, and was talking to the men, and, as near as I can figure, he was reading some of the maritime laws to them from a book.

TRIAL EXAMINER SEAGLE: Did you see him reading from a book?

THE WITNESS: Yes, I seen him reading.

By MR. CASTIELLO:

Q. Did you see what book he was reading from?

A. No, all I know is it was a red book. I was standing too far off.

Q. So you don't know what he was reading, do you?

A. No, but I heard, when he finished, he said, "That is the law," and that is as much as I heard.

MR. CASTIELLO: I move to strike the testimony where the witness says he was reading maritime laws from a book, on the ground that the witness is unable to specifically state that he knew it was a book concerning maritime laws.

TRIAL EXAMINER SEAGLE: The motion is granted.

By Mr. Childs:

Q. Did you hear what the commissioner said to these men who were refusing to obey the ship's officers' orders?

A. No. I stated a moment ago all I heard was, "That is the law."

Q. What time did the men turn to?

A. Approximately around 7:00 or so, maybe shortly after. I don't recall exactly.

Trial Examiner Seagle: Seven p. m.?

The Witness: Yes, seven p. m., or shortly after.

Trial Examiner Seagle: Off the record.

(Discussion outside the record.)

By Mr. Childs:

Q. Who is the chief engineer on this ship?

A. Mr. Norton.

Q. Did you make any report to Mr. Norton relating to the conduct of members of the crew in your department on July 18, 1938?

A. Yes. About nine o'clock, I told him what had happened in the engine room, and I told him exactly what Tracey had told me.

Q. You say nine o'clock. Was that nine o'clock on Monday, the 18th of July, 1938?

A. Nine o'clock in the morning.

Q. In the morning?

A. In the morning.

Q. Are you referring to the morning of July 18th, Monday?

A. July 18th.

Q. What time did you see the chief on that morning?

A. He was down there right after 8:00 o'clock, somewhere between 8:10 and 8:15.

Q. Just tell what you told the chief when you saw him there about 8:10 or 8:15.

A. I didn't say anything to the chief at that particular time. He was the one that done the talking.

Q. Was there any other time when you told the chief about the conduct of men in your department?

A. Yes. That was around 9:00 o'clock that morning.

Q. Now, just state what you told the chief, as nearly as you can recall.

A. I told the chief that I had went down below in the engine room there, and I told him that I had seen John Tracey and Fergeson underneath the ventilators there, and I told him that I had asked them what the trouble was, that there was no steam on deck, and he had told me that they were on strike, so I told him that I had told John Tracey that I was going to put steam on deck, when he said he wouldn't on account of being on strike.

So I told him that John Tracey had told me that I had better not, but I told him that I went to work and put steam on deck anyhow.

TRIAL EXAMINER SEAGLE: It is almost 1:00 o'clock. Will it take much longer to finish your examination?

MR. CHILDS: I think we had better resume after lunch.

TRIAL EXAMINER SEAGLE: The hearing is adjourned until 2:00 o'clock p. m.

(Whereupon, at 12:58 o'clock p. m., a recess was taken until 2:00 o'clock p. m., of the same day.)

AFTER RECESS.

(Whereupon, the hearing was resumed, pursuant to recess, at 2:00 o'clock p. m.)

TRIAL EXAMINER SEAGLE: The hearing will come to order.

MR. MCKAIG: Mr. Examiner, may we interrupt the testimony we are now taking in order to put on the

stand Mr. Farinholt, the acting shipping commissioner, who is producing at our request the shipping articles, so that he may identify them?

TRIAL EXAMINER SEAGLE: I have no objection to that.

MR. MCKAIG: Mr. Farinholt, will you go up there and take the chair, please?

ROBERT E. FARINHOLT, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. MCKAIG:

Q. Will you give your name and address for the record, please?

A. My name is Robert H. Farinholt.

TRIAL EXAMINER SEAGLE: Spell your last name, please, Mr. Farinholt.

THE WITNESS: F-a-r-i-n-h-o-l-t.

By MR. MCKAIG:

Q. And your address?

A. 300 Walnut Street.

Q. You are the acting shipping commissioner of the Port of Philadelphia?

A. I am; yes, sir.

Q. And in that capacity, you have in your care and custody the shipping articles signed by men shipping on ships from the Port of Philadelphia?

A. I do.

Q. Have you produced, at our request, the shipping articles which I now hand you?

A. Yes, I have.

Q. Are they the shipping articles signed by the members of the crew of the steamship "City of Fort Worth"?

A. They are.

Q. As of what date?

A. As of June 30, 1938.

Q. They bear the signatures of all members of the crew, do they?

A. At that time, yes.

Q. And also do they bear the signatures of the crew when they signed off at the termination of the voyage?

A. They do.

MR. CASTIELLO: Will you establish when they signed off?

By MR. McKAIG:

Q. When were those articles signed on?

A. They were signed on June 30th.

By MR. CHILDS:

Q. 1938?

A. 1938. And signed off on July 25th, 1938.

By MR. McKAIG:

Q. They were signed off on July 25th, 1938?

A. Yes, sir.

MR. McKAIG: Mr. Examiner, they having been identified, I formally offer them in evidence. And may I say that the acting commissioner must take them back with him. He has agreed to furnish a copy for the record, which I understand is agreeable to counsel, and, by stipulation, we may agree that a copy be furnished by the acting shipping commissioner, for the record.

TRIAL EXAMINER SEAGLE: You have agreed that photostatic copies, or a photostatic copy, of the original articles, may be substituted?

MR. McKAIG: I don't know as it is a photostatic copy.

By Mr. McKaig:

Q. How will you furnish a copy?

A. We had a talk with the Department of Commerce on this, and I was instructed if a copy was needed for the record, that our office should make a certified copy and furnish it to the National Labor Relations Board.

Trial Examiner Seagle: The original contains the signatures of the seamen who signed the articles, does it not?

The Witness: Yes.

Trial Examiner Seagle: Are the signatures themselves of any importance?

Mr. Childs: I don't think so.

Mr. Castiello: I don't think so.

Mr. Lustig: No.

Mr. McKaig: You are willing to stipulate these are the signatures of all the members of the crew of the "City of Fort Worth"?

Mr. Lustig: I could not so stipulate. I am not familiar with the signatures. I wouldn't want to stipulate to something which I could not stipulate to in good conscience.

By Mr. Castiello:

Q. Were these names signed in your presence?

A. They were not signed in my presence. In the presence of one of my assistants.

Trial Examiner Seagle: Off the record.

(Discussion outside the record.)

Trial Examiner Seagle: Is there any objection to receiving the shipping articles in evidence?

Mr. Lustig: No.

MR. CASTIELLO: There is no objection, if the Examiner please.

TRIAL EXAMINER SEAGLE: There being no objection, the document will be admitted in evidence as Respondent's Exhibit No. 2, and the copy may be substituted for the original.

(Thereupon, the document above referred to was marked as "Respondent's Exhibit No. 2," and was received in evidence.)

By MR. CASTIELLO:

Q. When may we expect that certified copy?

A. I could have it at any time that is necessary; tomorrow morning, if necessary.

MR. CASTIELLO: All right.

TRIAL EXAMINER SEAGLE: Are there any further questions of Mr. Farinholt?

MR. MCKAIG: Nothing further.

TRIAL EXAMINER SEAGLE: Witness excused.

(Witness excused.)

MR. CHILDS: May we resume with the testimony of the second assistant engineer, Robinson?

LAURENCE A. ROBINSON, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued).

By MR. CHILDS:

Q. In the course of your conversation with the chief, did you make any recommendation as to any of the men in your department?

A. No, sir, not at that particular moment.

Q. Now, did you have another conversation with him about that matter?

A. Why, yes, sir; I had a conversation with him later on.

Q. Was that while the ship was proceeding from the port of Houston to the port of Philadelphia?

A. Yes. That was after we had left Houston.

Q. And what was that conversation?

MR. LUSTIG: I would like to have it fixed a little more definitely, in point of time.

TRIAL EXAMINER SEAGLE: Can you tell us approximately when this conversation was held?

THE WITNESS: Why, yes; that was on Wednesday, Wednesday afternoon, the chief engineer came down below.

TRIAL EXAMINER SEAGLE: Wednesday of what week?

By MR. CHILDS:

Q. That would be Wednesday, the 20th of July?

A. The 20th of July, en route to Philadelphia.

Q. All right. Just tell us about the conversation.

A. The chief engineer came down below while I was on watch, and we got to talking about the strike in Houston there, so he asked me what I thought about this here trouble that they had there, and I told him, well, I was glad that it was all over, and glad we were away from Houston.

So then I asked the chief what he was going to do about these men, and so he asked me what I thought, and I told him I thought that John Tracey should be discharged.

Q. In the course of these conversations with the chief, did you speak about the conduct of Mr. Fergeson?

A. Well, yes, I mentioned to Mr. Norton, the chief, about both Fergeson and Braun, and I mentioned to him that they were not disobedient, or anything, and I didn't

have no trouble at all with them down in the engine room, and Tracey was the only one that done the talking there.

Q. In any of these conversations with the chief, did you tell him that Fergeson had refused to obey your orders, in the engine room?

MR. LUSTIG: I object to that as highly improper, if the Examiner please.

MR. CASTIELLO: It is leading.

TRIAL EXAMINER SEAGLE: I must ask you, Mr. Childs, not to testify in the questions.

The objection is sustained.

By MR. CHILDS:

Q. Did you ever have any further conversation with the chief in which Fergeson was mentioned?

A. Well, no, that was about the only conversation that I had as far as Fergeson was concerned.

Q. Which conversation are you referring to now?

A. I am referring to the conversation that I told him that I didn't have no trouble with either Fergeson or Braun.

Q. Had you mentioned Fergeson in your first conversation with the chief that took place, as I recall it, on the 18th of July?

A. Yes. I told the chief that they had listened to me, in fact, they carried out my orders, and the only one that didn't was John Tracey.

Q. Will you go back to the first conversation that you had with the chief, and tell again what you said to the chief about Fergeson?

MR. LUSTIG: I object to that as being repetition. It has been testified to.

TRIAL EXAMINER SEAGLE: The witness has already testified as to what he said about these members of the crew.

By MR. CHILDS:

Q. When did you have your first conversation with the chief engineer?

A. The first conversation I had with the chief engineer was around nine o'clock.

Q. Did you report anything to him about Fergeson in that conversation?

MR. LUSTIG: That has already been testified about.

TRIAL EXAMINER SEAGLE: Let us have it once again.

A. I told the chief about what Tracey had told me when I told him I was going to put the steam on deck.

By MR. CHILDS:

Q. What time did Fergeson come on duty that morning on July 18, 1938?

A. He was supposed to go on duty at eight o'clock that morning.

Q. Did you go on duty at that time?

A. No, sir.

Q. Did you tell the chief he didn't go on duty?

A. Well, the chief was already talking to him.

MR. CHILDS: Cross-examine.

TRIAL EXAMINER SEAGLE: The hearing is recessed for a few minutes.

(A short recess was thereupon taken.)

TRIAL EXAMINER SEAGLE: The hearing will come to order.

MR. CASTIELLO: Mr. Childs, I notice in the record of the previous proceedings the second assistant is referred to as "Robertson."

MR. CHILDS: It is the same man.

MR. CASTIELLO: It is the same man, is it not?

MR. CHILDS: Yes.

CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. On the morning of July 18th, you noticed that there was the usual steam pressure on the deck, did you not?

A. Yes, sir.

Q. You were speaking of the steam, of course, for the winches?

A. The winches.

Q. You did not observe, did you, that there was no steam for the auxiliaries?

A. I knew there was steam for the auxiliaries.

Q. There was steam?

A. Yes, I knew it.

Q. As a matter of fact, there was steam all day for the auxiliaries, was there not?

A. Yes, sir.

Q. Did any of the strikers, at any time during the strike, ever attempt to interfere with your putting on steam for the auxiliaries or for the winches?

A. Not for the auxiliaries. But for the cargo winches, yes.

Q. How did that interference come about?

A. When I went up to turn the steam on deck, John Tracey came up on top of the grating where the steam valves are, where I was putting steam on deck, and asked me, "What are you doing?"

I told him I was putting steam on deck.

So he told me, he says, "Go ahead," he says, "You won't have none after 8:00 o'clock."

Q. Did you believe that to mean after 8 a. m.?

A. After 8 a. m.

Q. The fact is, you did have steam after 8 a. m., did you not?

A. Yes, sir.

Q. And Mr. Tracey did not stop you or try to stop you from putting up steam from the winches, did he?

A. No, sir.

Q. In your conversation with Tracey, you asked him why he was not putting up steam for the winches, did you?

A. Yes, sir.

Q. And what was his reply?

A. He said that they were on strike.

Q. And you asked him why he was on strike, didn't you?

A. Yes, I did.

Q. And what did he say to you?

A. Well, he told me that they had voted to go on strike.

Q. For what reason?

A. He didn't say what reason.

Q. Didn't you ask him why they had voted to go on strike?

A. No, I didn't.

Q. Isn't it a fact he told you they were on strike for union recognition?

A. No, sir, he didn't.

Q. He didn't tell you that?

A. No, sir.

Q. Weren't you interested in knowing why the men were on strike?

A. Well, yes, I was.

Q. I mean, it was natural for you to be curious?

A. I was curious.

Q. Didn't you express your curiosity to the point where you asked him, "Why are you striking?"

A. No, I didn't ask him why he was striking.

Q. And you never satisfied your curiosity in that respect, did you?

A. The only thing is, he told me they had voted to go on strike, and that they had voted there would be no steam on deck, and there would be no cargo to come aboard the ship that day.

Q. Before you spoke to Mr. Tracey, had you seen your third assistant, Mr. Pool? Or, is that the first assistant?

A. The first assistant, Mr. Paul.

Q. Mr. Paul?

A. Yes, sir.

Q. Did you speak to him?

A. No, sir.

Q. You told Tracey, "Why don't you pull out when you get to Philadelphia?" Will you repeat that conversation particularly directed to that?

A. Well, I told Tracey that if he was going to go on strike, he ought to pull a thing like that in Philadelphia, where the proper executives were to take care of a thing like that.

Q. What was there to take care of?

A. Well, in my mind, I figured that in Houston they didn't have the proper authority to handle anything like that.

Q. You say the proper authorities were in Philadelphia to take care of what?

A. To take care of the strike.

Q. You must have known the reasons the men were going on strike in order to tell him that the proper authorities were in Philadelphia to take care of that?

A. Well, no, I didn't know the reason.

Q. And your testimony is you never inquired what the reasons were?

A. No, I was not interested.

Q. Weren't you interested in seeing that the ship sailed and that the men obeyed their orders?

A. Yes, I was interested in that.

Q. Wouldn't it be natural for you to inquire why the men were not obeying orders?

A. Well, all I know, then, he told me they were on strike, and that was enough. I didn't have to go into detail.

Q. You discussed the strike later with the chief engineer, Mr. Norton, didn't you?

A. Yes.

Q. Was any conversation had with him about the reasons the men had gone on strike?

A. No, sir.

Q. Didn't he tell you why they had gone on strike?

A. No, sir.

Q. Did you inquire of him?

A. No, sir.

Q. Did you know at that time, had you learned why they had gone on strike?

A. No, I hadn't learned up until that time.

Q. Did there ever come a time when you did learn?

A. Yes.

Q. When?

A. Oh, that was when the United States Shipping Commissioner was on board?

Q. Did you learn what the reasons were then?

A. Yes, at that time.

Q. And from whom did you learn?

A. I heard this here Warren talking to the commissioner.

Q. And did he give him the reasons he was on strike?

A. Yes.

Q. What did he say?

A. Well, he said that they wanted recognition of the union, and he said something about the union had won the election, and that the company was not paying any attention to the election.

Q. Did he say anything else?

A. No, that's all I heard him say.

Q. The local agent, Mr. Shreider, was present at the time, was he not?

A. Yes, Mr. Shreider was present.

Q. And so was the master, Mr. Rudan?

A. Yes.

Q. And was the chief mate, Mr. Helland, there?

A. No, sir.

Q. Were there any other officers of the ship present?

A. Yes, the chief engineer was back there.

TRIAL EXAMINER SEAGLE: What is the name of the chief engineer?

MR. CHILDS: Norton.

THE WITNESS: Mr. Norton.

By MR. CASTIELLO:

Q. When Mr. Warren told these men the reasons the union had gone on a strike, what reply was made by the officers of the ship?

A. There was no reply that I heard.

Q. Nothing at all said by them?

A. No, sir.

Q. Are you certain about that?

A. Yes, sir. In fact, I left there at that time.

Q. You mean, you left before you could hear a reply?

A. Sure.

Q. So you don't know whether they had made a reply or not, do you?

A. No, because immediately after Warren was talking, he was talking to the United States shipping commissioner.

Q. Yes.

A. And the shipping commissioner is the one that started talking. There was none of the officers started.

Q. Do you remember what the commissioner said?

A. No. I left then.

Q. So you don't know what he had to say, if anything?

A. Well, I know that during my time back there on the poop deck, the commissioner was reading out of a book. What he was reading I don't know for sure, but I know at the conclusion of his conversation he told them, I heard him say, that was the law.

Q. Did you hear any statements made by any of the officers of the ship while you were on the poop deck?

A. No, sir.

Q. None at all?

A. No, sir.

Q. You did not recommend that Mr. Fergeson be fired, did you?

A. No, sir.

Q. Didn't you consider Mr. Fergeson legally as guilty, if there was any guilt, as Mr. Tracey?

A. No.

Q. You didn't?

A. No.

Q. What were the reasons that led you to that conclusion?

A. Well, Mr. Fergeson, he didn't give me no back talk. I had no trouble at all with him in the engine room.

Q. And did you recommend that Tracey be fired because he gave you back talk?

A. Absolutely.

Q. And not for what he did?

A. No.

Q. Not because he went on strike, but because he gave you back talk? Is that your answer?

A. Yes, and he was disobedient.

Q. What was the reason for Fergeson's discharge?

A. That, I don't know.

Q. Wasn't it ever communicated to you?

A. Yes, later on.

Q. By whom?

A. By the chief engineer.

Q. Now, the chief engineer was not present down in the engine room the morning of the strike, was he?

A. Yes, sir.

Q. He was?

A. He was present.

Q. Was he present when Tracey and Fergeson were present?

A. Yes.

Q. And when they spoke to you?

A. No, he was not.

Q. What occurred, if anything, when the chief was present?

A. That I don't know, because I was in the fire room at the time, taking care of the fires.

Q. How do you know that the chief was there?

A. How do I know?

Q. Yes.

A. I left the engine room as soon as the chief came down there.

Q. When you got back to Philadelphia, did you make any report to anyone about the actions of the men in the engine room during the strike?

A. Why, yes.

Q. To whom?

A. To the chief engineer.

Q. What did you tell him?

A. Well, I told the chief engineer that he had carried out my order.

Q. That he had carried out your order. Who do you mean, that who had carried out your order?

A. The chief engineer.

Q. No, you don't mean that, do you?

A. Or, the request I made. It wasn't an order.

TRIAL EXAMINER SZAGLE: You must be confused.

THE WITNESS: It was a request.

By MR. CASTIELLO:

Q. I think you are confused. Here is my question: You stated that when you got back to Philadelphia you made a report about the actions of certain of the strikers attached to the engine department, is that correct?

A. Yes.

Q. To whom did you make the report?

A. Is it a report or a conversation?

Q. All right. Let's call it "conversation"?

A. We had a conversation when we got back to Philadelphia.

Q. Who had the conversation?

A. The chief engineer and I.

Q. Where?

A. Up on the deck.

Q. And what was the conversation?

A. Well, it was shortly after he had told Tracey and Fergeson that they were finished.

Q. Did you ever have a conversation before the discharge of Fergeson and Tracey with the chief engineer?

A. Yes.

Q. When?

A. I had that on about the 20th, it was two days after we left Houston, anyhow.

Q. What did you tell the chief engineer at that time, on the 20th?

A. I told the chief engineer that I would like to have Tracey discharged; in fact, I insisted on it.

Q. When you got back to Philadelphia, after Tracey and Fergeson were discharged, did you have another conversation with the chief?

A. Yes, sir.

Q. Just tell us what he said and what you said.

A. I told the chief, I said, "Well, I am glad that you carried out my request."

Q. Did he carry out your request?

A. Yes.

Q. He fired Fergeson, didn't he?

A. Well, that was left to his jurisdiction.

Q. But that was not part of your request, was it?

A. No.

Q. And you were the one to see what Fergeson did down in the engine room, weren't you?

A. Yes.

Q. The chief wasn't there at the time?

A. No.

Q. Did you express any surprise to him about Fergeson's being discharged?

A. Yes.

Q. What did you tell him?

A. Well, I asked the chief why he left Fergeson go.

Q. Yes.

A. And he told me that he had told Fergeson to go on watch and take care of the fires.

Q. Yes.

A. And he absolutely refused.

Q. Did the chief tell you when he had told Fergeson to go on watch?

A. Yes.

Q. When?

A. He said that he told Fergeson to go on watch while I was down in the fire room taking care of the fires.

Q. What day was this?

A. That was on the 18th.

By Mr. Lustig:

Q. July 18, 1938?

A. July 18, 1938.

Q. That was while the boat was at Houston?

A. Yes, sir.

Q. Moored to the dock?

A. Yes, sir.

By Mr. Castiello:

Q. Did you make report to anybody else when you got back to Philadelphia?

A. No, sir.

Q. Anyone at all——

A. No, sir.

Q. (Continuing.) —connected with the company?

A. No, sir.

Q. You are absolutely certain about that?

A. No, sir. That is not my business.

Q. I don't know whether it is your business or not, but the fact is, you reported to nobody except the chief engineer on July 20th?

A. That is my duty, to report anything that comes under my jurisdiction.

Q. So that Mr. Sherry didn't ask you about the actions of the men in the engine room, did he?

A. No, sir.

Q. Did you observe the men while they were on the poop deck?

A. I did.

Q. You were around there, weren't you?

A. I was.

Q. And they merely sat on the poop deck?

A. They did.

Q. They didn't try to prevent anybody from loading cargo, did they?

A. No, sir.

Q. They didn't try to prevent the officers from doing the duties that the officers had to do on board the ship?

A. No, sir.

Q. They didn't make any threats to harm the ship, did they?

A. No, sir.

Q. They didn't make any threats to harm the officers, did they?

A. Yes, in the morning.

Q. Tell me about that.

A. Well, that was when I went to put steam on deck, Tracey told me I had better not put steam on deck.

Q. You consider that a threat, do you?

A. Absolutely, because he told me that I would be sorry, and if that ain't a threat, I don't know what is.

Q. Did you ever have any reason to be sorry for it?

A. No, sir.

Q. Tracey never hurt you, did he?

A. No, sir.

Q. He never threatened to hurt you after that time, if you call that a threat?

A. No, sir.

Q. Isn't it true that Tracey and Fergeson and the other men in the engine room acted just as they always acted on the return voyage to Philadelphia?

A. That is true.

Q. They were a good crew on the return voyage, just as they always were a good crew?

A. Yes, sir.

Q. And did you observe that the conduct of any of the other strikers was any different than it had been at any other time?

A. No, sir.

Q. Now, I am now specifically referring to the trip from Houston to Philadelphia, from July 18th to July 25th.

A. Well, as a matter of fact, I didn't pay no attention to anyone, only in my own department.

Q. And they acted all right?

A. Yes; because after the ship had sailed that night, I went to Fergeson and Braun and the oiler, Edward Hughes. Well, of course, you may wonder why I only went to three, but I had a reason for that.

Q. Tell us about that.

A. To begin with, Edward Hughes, hé was my oiler; he was the oiler on watch with me. Alex Braun, he was a fireman; and Fergeson, he was a fireman.

Now, Fergeson and Edward Hughes, they were on my watch for the entire voyage home to Philadelphia. Well, all right. The firemen that came under my supervision, in fact, I am in charge of the fire room, it was only natural for me to take the two firemen and this oiler which works with me on watch the entire trip home, so I told them, I says, "Well, boys, let's forget all about what happened," and I said, "Let's string along just as though nothing ever happened."

And they went home just as though nothing ever happened; they all kept their respective stations clean in the fireroom, and the oiler on watch with me, Edward Hughes, he listened to me, everything I told him to do on watch, he listened to me, and it was just like nothing had ever happened.

Q. And it was the same with the other men in the engine room who were not on your watch?

A. Yes.

Q. As far as you know?

A. As near as I know, because I didn't figure it was necessary for me to go directly to Tracey or the wipers, because I wouldn't be working with them on the way home.

Q. There was no trouble at all on the way back from Houston——

A. No, sir.

Q. (Continuing): —with any of the strikers, was there?

A. No, sir; no trouble at all.

Q. They didn't endanger the ship in any way, did they?

A. No, not enroute home.

MR. CASTIELLO: That's all.

By MR. LUSTIG:

Q. When the men resumed work at 7:00 p. m., on July 18th at Houston, did you ask them why they resumed work?

A. No, sir; I didn't.

Q. Did you know that the strike was ended?

A. Well, naturally, I would know that.

Q. Did you discuss the ending of the strike with any of the men?

A. No, I did not.

Q. Did you discuss it with any of the officers?

A. No, I did not.

Q. Did you discuss it the next day with any of the officers?

A. No, sir.

Q. You say you had a talk with the chief engineer on Wednesday, July 20, 1938, enroute to Philadelphia, is that right?

A. Yes, sir.

Q. And did he ask you what you thought about the strike?

MR. CHILDS: I object.

A. No, sir.

MR. CHILDS: Just a minute. I object to these questions, on the ground it is repetition, it has already been covered.

TRIAL EXAMINER SEAGLE: Objection sustained.

I must ask you, Mr. Lustig, not to cover the same ground.

MR. LUSTIG: I don't think it is covering the same ground. I don't think it was covered on cross, Mr. Examiner.

TRIAL EXAMINER SEAGLE: I think it was.

MR. LUSTIG: Let me put just one more question, Mr. Examiner.

By MR. LUSTIG:

Q. Did you at any time discuss the ending of this strike with any of the officers on board the ship?

MR. CHILDS: Same objection.

THE WITNESS: Will you read that?

TRIAL EXAMINER SEAGLE: The objection is sustained.

THE WITNESS: What is "sustained"?

TRIAL EXAMINER SEAGLE: You need not answer.

By MR. LUSTIG:

Q. The auxiliary pumps were kept working throughout the course of the day of the strike, is that right?

MR. CHILDS: Same objection.

TRIAL EXAMINER SEAGLE: Objection sustained.

MR. LUSTIG: I am just using that as the foundation for the next question.

TRIAL EXAMINER SEAGLE: It isn't necessary. That question has been put to the witness, and answered.

By MR. LUSTIG:

Q. The auxiliary pumps were sufficient to maintain whatever fire-fighting apparatus you had on board, isn't that true?

MR. CHILDS: The same objection.

TRIAL EXAMINER SEAGLE: The witness has already answered that question, also.

The objection is sustained.

MR. LUSTIG: I don't recall that question having been answered.

TRIAL EXAMINER SEAGLE: I am sorry if you don't recall it, but it happens to be a fact that the witness answered the question.

MR. LUSTIG: That's all.

MR. CHILDS: No further questions.

TRIAL EXAMINER SEAGLE: Have you told us, Mr. Robinson, what time of day it was, that the shipping commissioner was on board?

A. Yes. It was between 11:20 and 11:30.

TRIAL EXAMINER SEAGLE: Do you know approximately how long he stayed on board?

A. Why, no, because I had only came up to get dinner.

TRIAL EXAMINER SEAGLE: But you saw him between 11:20 and 11:30, is that it?

A. Somewhere between then.

TRIAL EXAMINER SEAGLE: That's all.

(Witness excused.)

MR. CHILDS: Mr. Norton.

JOSEPH A. NORTON, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CHILDS:

Q. Will you state your full name?

A. Joseph A. Norton.

Q. Where do you live?

A. 1460 North Fifty-eighth Street.

Q. Will you state what license you hold, engineer's license?

A. Chief engineer.

Q. For how long?

A. Since 1917.

Q. How long have you been to sea?

A. Oh, twenty-seven years.

Q. How long have you been to sea as a licensed engineer?

A. About twenty-three years.

Q. Were you the chief engineer on the steamship, "City of Fort Worth," at Houston, on July 18, 1938?

A. Yes, sir.

Q. What time did you go down to the engine room on the morning of July 18, 1938?

A. I arrived on board around 8:10 or 8:15, in between there, and the Third told me there had been trouble aboard.

Q. The third assistant?

A. The third assistant.

Q. Is that Mr. Taylor?

A. Robert Taylor.

Q. Did you go down below?

A. I went down below, and there was John Tracey and this Elmer Fergeson was down below, and I asked Tracey what was the trouble, so he told me they were on strike.

And I asked him what it was all about, and he said recognition of the union.

So I says, "Well, are you going to turn to?"

He says, "No."

So I turned to Fergeson, who was standing a few feet off, and I asked Fergeson if he wasn't going to take orders, and he said "no."

Q. Was he the fireman?

A. He was.

Q. Was he supposed to be on watch at that time?

A. From eight o'clock.

Q. He said he wouldn't work?

A. He said he wouldn't take his watch. So I asked him to take it until I went up to find out something about it, which I meant to go up to see the captain.

So I left the engine room, and I went up above, by the captain's room, and he wasn't up there, so I went out on deck and I seen this Mr. Shreider out there, and I asked him about the captain, and he said he hadn't seen him, so I waited out there for, say, a half an hour or more, then I came aboard, and when I came aboard, I went down below again, and Tracey and Fergeson were back aft, so I waited for the captain to come aboard.

Q. Did you have any further conversation with Fergeson at that time?

A. No, sir.

Q. Did you have any conversation any time with him that day about his license being taken away?

A. Why, that was back aft, when we went back to find out if the men would go to work.

Q. About what time was that?

A. Why, that was 10:30.

Q. Just say what you said to Fergeson, and what Fergeson said to you.

A. I said to Fergeson that I ought to have his ticket taken away, which I meant by that his fire license or fire ticket, by the inspectors, because he refused to go ahead with the fires down below.

Q. Who took care of the fires after Fergeson and Tracey left?

A. Mr. Robinson, the second assistant.

Q. Was the reason the ship had steam on the rest of the day——

MR. CASTIELLO: Now, that is leading.

MR. CHILDS: All right.

By MR. CHILDS:

Q. Why was steam furnished during the balance of that day?

A. Why?

Q. How was it furnished?

A. Mr. Robinson, the second, had taken care of the fires up until around 11:00 or 11:30, and then we had a man, Lucas, he is a fireman, he didn't go back aft, and he took the fires up until four.

TRIAL EXAMINER SEAGLE: What do you mean by saying "Lucas didn't go back aft"?

THE WITNESS: Why, he wasn't with the other men that was supposed to be on strike.

By MR. CHILDS:

Q. Did you hear the conversation in which the captain ordered these— —

MR. CASTIELLO: Now, that has all the earmarks of a leading question, although I have not heard it all.

MR. CHILDS: I will rephrase it.

By MR. CHILDS:

Q. Did you hear any conversation between the captain and the members of the crew on July 18, 1938?

A. I did, when we all went back there.

Q. About what time was that?

A. It was a little after 10:30.

Q. Just tell the Board what you heard the captain say.

A. Why, he explained to them about the articles, that they were on articles, and then he went on to ask them if

they were going to turn to, and this fellow Warren, I believe, I see him step out as spokesman, and he said something to the captain about union recognition, and he also said that he would let them know, or would talk for the rest.

Q. Were Fergeson and Tracey among the men to whom the captain gave orders?

A. Why, yes. I don't remember seeing them. They might have been on one side, on account of the house there.

Q. Were you present when the commissioner was there?

A. I was.

Q. Did you hear what he said to the crew?

A. Well, no, I didn't. There was quite a crowd up there, and the captain and the commissioner, and Mr. Shreider, and at that time the rest of the boys was all back there, and I am rather short, I couldn't get in very close to them to hear what was going on, although I know he was reading the law out of some book.

Q. Did Mr. Robinson, the second assistant engineer, make any report to you about the conduct of any of the men in his department?

A. Yes, he told me about Tracey and Fergeson, or at least Tracey he spoke of, when he wanted to turn on the steam, and that Tracey had said, "You better not, or you will be sorry."

Also, when he went and lit the fires, when he came out, that Tracey had said something to him then, I forget just what it was then. Oh, yes. He asked him if he would be responsible for them fires, and the second told him he would.

Q. Did you make a decision not to re-sign any of these men on the ship?

A. I made a decision myself, what I was going to do.

Q. In whose province is the employment and letting out of employees of the engine department?

A. In this case I took it onto my own, but in most cases the first assistant generally hires and fires, at least fires, because he has really charge of the men in their work.

Q. In this case, you took that responsibility yourself?

A. I took that responsibility myself.

Q. By the way, is there any danger to a ship arising out of the operation of the winches if the steam gets low?

A. Why, yes.

Q. Will you explain that?

A. As far as the winches goes, if the steam happens to get low, and they are working the winches, when they lift a load from the hold, and they don't keep it going, if it gets about fifteen feet or so above, it is apt to swing over to one side and hit somebody, or drop the cargo.

Q. If the steam is not kept up, is there any danger of any fire hazard to the ship?

A. There is.

Q. Just explain that, will you?

A. We have fire pumps down there, too, and in case of a fire aboard ship, we need them, but you wouldn't have steam to run them pumps.

Also, if a fire should occur out on the dock——

MR. LUSTIG: I object to any testimony of a fire on a dock.

MR. CHILDS: I think it is perfectly proper. These men testified they were not going to furnish steam, and I think it is part of this situation to show the results of their not furnishing steam while the vessel was moored to this dock.

MR. LUSTIG: I think it is a question altogether hypothetical, involving a state of affairs that did not exist.

MR. CHILDS: That did not exist because other people did the work these men didn't do.

TRIAL EXAMINER SEAGLE: He may answer.

MR. CHILDS: Will you read the last answer?

(Answer read.)

By Mr. Childs:

Q. Will you continue with your answer?

A. If the dock should catch fire at any time, and they wanted to move the ship away from the dock so the ship couldn't catch fire, they would have no steam to run them winches to move it up, or move it away from the dock.

Mr. Childs: Cross-examine.

Cross-Examination.

By Mr. Castiello:

Q. Isn't it a fact, Mr. Norton, that in no case would you start running the winches to load the ship if there was not sufficient steam pressure?

A. No, we wouldn't.

Q. Isn't that true?

A. It is, sure.

Q. That is true?

A. If the steam wasn't on.

Q. So that you would know before you start to load the cargo whether or not there is sufficient steam?

A. No.

Q. Why wouldn't you?

A. Because the men on the ship and on the dock do the loading, and all they do is open up the winches, they have got no way of telling how much steam is on until they start loading

Q. You are on the deck of the ship, are you not? Let us try to visualize a loading and unloading.

A. Yes.

Q. You are on the deck of the ship?

A. Yes, sir.

Q. If you knew there was not enough steam to run those winches, the first thing you would do would be to let the stevedores know it, isn't that a fact?

A. They would let me know.

Q. The stevedores would let you know that there was not enough steam?

A. They would let me know, yes.

Q. So that never would the occasion arise that anybody would be hurt by the lack of steam in lifting a cargo?

A. Oh, yes.

Q. Well, how is that?

A. Well, if they was starting to lift a sling of cargo up out of the hold, and somebody went and shut off the steam, at that immediate time, as they started that load up, it would draw across this way out of the hold, and when they got that load up so far, fifteen feet, say, and they couldn't draw it up any higher, naturally, it is going to go over on the other side, and naturally it is going to hit a stanchion over there or something, and knock this cargo off, and the men over there on the other side are working.

Q. Isn't it a fact that the steam cannot ever be cut off as abruptly as you say it could?

A. Yes, it could. Somebody could cut it off if they wanted to.

Q. Doesn't the steam die gradually after the fires are put off?

A. When you shut them valves off, by the time one of them winches would take a sling, that steam would be all out of that line.

Q. You know that the valves were never shut off?

A. No. I am talking about what could be.

Q. But in this case, the valves were not shut off?

A. They were not opened up until the second assistant opened them up.

Q. The fires were just not worked?

A. The fires were shut off by the 4:00 to 8:00 fireman.

Q. So that the steam was dying gradually?

A. So that the steam was dying gradually at the time.

Q. There was no abrupt cutting off of the steam, was there?

A. Well, yes, there was. It was really cut off altogether, because they cut the fires off.

Q. But the steam died gradually?

A. Yes, the steam died gradually.

Q. So that for all purposes, on this particular occasion, any cargo being loaded wouldn't swing back, as you say?

A. No, it hadn't been at this time.

Q. Isn't it true that the stevedores don't begin to load until about eight o'clock, or is it later than that?

A. No, it is eight o'clock.

Q. About eight o'clock.

A. Yes, sir.

Q. And the steam for the winches was let to die down before eight o'clock, wasn't it?

A. I believe that's right; 7:30.

Q. And you knew that you were not going to have steam for the cargoes that day, because Mr. Tracey told your second assistant, Mr. Robinson, and yourself, that there would be no steam?

A. Right.

Q. So that any difficulty that might happen could easily have been resolved by your putting the steam up yourself?

A. Which we did.

Q. That's right. Now, you heard Mr. Robinson testify, didn't you?

A. Part of it, yes.

Q. Did you hear him testify that the ship was not in any danger at any time?

A. Right.

Q. That is true, isn't it?

A. It is.

Q. There was always enough steam up for the fire pumps?

A. There was, while we kept it up.

Q. But it was up nevertheless, wasn't it?

A. Yes.

Q. None of the strikers ever prevented you from putting the steam up yourself, did they?

A. Not me, no.

Q. And they didn't prevent any of the other men in the engine room, did they?

A. Not what you might say prevent, although he did, in a way, threaten the second if he turned on the steam.

Q. You don't know whether he threatened the second, do you?

A. Just what the second told me.

Q. You were not there?

A. No, but I had to take his word.

Q. The strikers gave you sufficient warning that there would be no steam for the winches, before the 8:00 o'clock watch started that morning?

A. Not me. I wasn't there until 8:15.

Q. But you received reports from your assistants that the strikers wouldn't give no steam at 8:00 o'clock?

A. At 8:00 o'clock.

Q. Did you observe the conduct of the men on the poop deck?

A. Well, yes, in a way, while I was back there at the time, as far as the conduct goes there was nothing wrong that I could see.

Q. Is your testimony the same as Mr. Robinson's, about the conduct of the crew on the poop deck and on the voyage back to Philadelphia?

A. Absolutely.

Q. And is that true?

A. Yes, sir.

By Mr. Lustig:

Q. Were you present on the dock when the company's representatives and the union delegate and Warren agreed to settle the strike?

A. No, sir. I was aboard ship.

Q. Did you ever discuss with the captain, or any other officers, as to how this strike was settled?

A. Never.

Q. You did not find out for yourself, did you, in any way?

A. No.

Q. Weren't you curious to know just how the strike had been ended?

A. Well, I was curious, but I didn't want to ask.

Q. Why?

A. Well, for the reason that I didn't want to have anything to say.

Q. In other words, you don't want to be mixed up in it? I mean, you didn't want to be mixed up in it?

A. I didn't want to be mixed up in it.

Q. You didn't press any charges before any governmental agency, such as the Bureau of Marine Inspection and Navigation?

A. I did not.

Q. Against the men employed in the engine room, or the fire room, or men under your supervision——

A. No, sir.

Q. (Continuing.) —for failure to obey orders on the 18th of July, 1938, did you?

A. No, sir.

Q. The company didn't either, did it?

A. I don't think so.

Q. As far as you know?

A. As far as I know.

Q. You have not been called to testify with reference to any such action, have you?

A. No, sir.

MR. LUSTIG: That's all.

TRIAL EXAMINER SEAGLE: Mr. Norton, who were the members of the crew in your department that went on strike?

THE WITNESS: That went on strike, was Elmer Fergeson, and Tracey, Eddie Hughes, and a boy by the name of Neeley, and another boy, Holt.

TRIAL EXAMINER SEAGLE: They were all?

THE WITNESS: Braun went out, but he is back on the ship.

TRIAL EXAMINER SEAGLE: What was Eddie Hughes' job?

THE WITNESS: He was an oiler.

TRIAL EXAMINER SEAGLE: And what was Neeley?

THE WITNESS: A wiper.

TRIAL EXAMINER SEAGLE: And Holt?

THE WITNESS: A wiper.

TRIAL EXAMINER SEAGLE: And Braun?

THE WITNESS: A fireman.

TRIAL EXAMINER SEAGLE: I believe it has already been testified that Tracey was a fireman aid oiler?

THE WITNESS: An oiler?

TRIAL EXAMINER SEAGLE: An oiler?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Tracey was an oiler?

THE WITNESS: Tracey was an oiler.

TRIAL EXAMINER SEAGLE: I believe you testified that you took the responsibility for the discharge, is that what you said?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Just what did you mean by that?

THE WITNESS: Well, as I say, the first assistant has generally the say of firing the men at most times, but I took this onto my own on account of I being down there at the time, and I asked this man, Elmer Fergeson, if he would take the fire, I asked him a

couple of times, and he said no, he wouldn't. I would have overlooked that had he taken the fires for the time until we got straightened out, which he wouldn't do, and I let him go.

TRIAL EXAMINER SEAGLE: You mean by that, that then and there you told him he was discharged?

THE WITNESS: Sir?

TRIAL EXAMINER SEAGLE: You mean you told Fergeson on July 18th that he was discharged?

THE WITNESS: I did not.

TRIAL EXAMINER SEAGLE: When did you tell him that?

THE WITNESS: I told him after he had got paid off.

TRIAL EXAMINER SEAGLE: On the boat, on the 25th, in Philadelphia?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: When you say you took the responsibility, do you mean you discharged him without consulting Mr. Sherry or any of the officers of the line in port?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And did you do likewise in the case of Fergeson?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: What did Hughes do during the strike?

THE WITNESS: Well, all I seen of him was when he was back aft.

TRIAL EXAMINER SEAGLE: You mean by that, sitting on the poop deck?

THE WITNESS: Sitting on the poop.

TRIAL EXAMINER SEAGLE: What did Neeley do during the strike?

THE WITNESS: Why, he was back there also, on the poop.

TRIAL EXAMINER SEAGLE: And Holt?

THE WITNESS: Also.

TRIAL EXAMINER SEAGLE: And Braun?

THE WITNESS: He was back there.

TRIAL EXAMINER SEAGLE: Didn't Braun refuse to do any work during the strike?

THE WITNESS: Braun had went off watch at 8:00 o'clock in the morning, and when I asked him back there, as I asked them all, he said he had just come off watch, so there was really an excuse until his time would come.

TRIAL EXAMINER SEAGLE: How long would he stay off watch, when would have been his next watch?

THE WITNESS: He would have went on at 12:00 o'clock that night.

TRIAL EXAMINER SEAGLE: You mean he would have been off from eight in the morning until midnight?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: How about Holt?

THE WITNESS: Holt was a wiper, he is supposed to work eight hours, from eight to five.

TRIAL EXAMINER SEAGLE: At 8:00 o'clock in the morning was he supposed to be on duty?

THE WITNESS: Holt?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And he refused to go on duty?

THE WITNESS: He did.

TRIAL EXAMINER SEAGLE: And refused to perform any of the duties of his job, is that correct?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And what was the situation with respect to Neeley?

THE WITNESS: The same.

TRIAL EXAMINER SEAGLE: He was supposed to be on duty?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: At eight o'clock?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And thereafter?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: What was the situation with respect to Eddie Hughes?

THE WITNESS: Eddie Hughes, he said the same thing, that he had to stick.

TRIAL EXAMINER SEAGLE: Was he, at eight o'clock and thereafter, supposed to be on duty?

THE WITNESS: He was supposed to come on, I think he was supposed to come on at twelve o'clock.

TRIAL EXAMINER SEAGLE: Twelve o'clock noon?

THE WITNESS: Twelve o'clock noon.

TRIAL EXAMINER SEAGLE: Of that day?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: But he didn't go on duty at twelve noon?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: He stayed out with the rest of the strikers?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Will you tell me why it was that you decided to discharge only Fergeson and Tracey?

THE WITNESS: Why, yes. I discharged Tracey because of his talk to the second assistant, his threatening way.

TRIAL EXAMINER SEAGLE: Why did you decide to discharge Fergeson?

THE WITNESS: I discharged Fergeson, because I went down below, and it being his watch, I asked him if he would go on watch and take the fires until we got straightened out, and he said no, he wouldn't.

TRIAL EXAMINER SEAGLE: And that's all he said?

THE WITNESS: That's all.

TRIAL EXAMINER SEAGLE: He didn't threaten you in any way?

THE WITNESS: Oh, no.

TRIAL EXAMINER SEAGLE: He refused politely? Is your answer "yes"?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: But he refused to obey your orders, is that it?

THE WITNESS: He did.

TRIAL EXAMINER SEAGLE: He did not do, therefore, any more than Holt, or Hughes, or Neeley did, did he?

THE WITNESS: Why, yes, in a way he did.

TRIAL EXAMINER SEAGLE: How?

THE WITNESS: In the first starting off in the morning, he was down there on the floor at his job, while the others was all sitting back aft, and as this thing was already settled, after he had refused, I asked him if he would stay there until I could see what I could do.

TRIAL EXAMINER SEAGLE: Then you discharged Fergeson for his conduct, during the strike, is that right?

THE WITNESS: For refusing to take the watch.

TRIAL EXAMINER SEAGLE: For refusing to take the watch?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: But you did not discharge Holt or Hughes or Neeley for refusing to take their watches?

THE WITNESS: I did not discharge them, no.

TRIAL EXAMINER SEAGLE: Wasn't their conduct just as bad as Fergeson's?

THE WITNESS: No, I didn't figure it.

TRIAL EXAMINER SEAGLE: You didn't figure it?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Apart from their conduct, on July 18th, you had nothing against any of these men, did you?

THE WITNESS: No, I didn't.

TRIAL EXAMINER SEAGLE: They were perfectly competent seamen, were they not?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Have you ever been on a ship that caught fire while it was docked?

THE WITNESS: No. I was in a company where one of their ships caught fire, where they had to move, that is why I remember the instance of using winches when they wanted to move the ship.

TRIAL EXAMINER SEAGLE: Did that fire occur in the port?

THE WITNESS: It was in the hold.

TRIAL EXAMINER SEAGLE: In the hold?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: I am not interested in the specific place on the ship in which the fire occurred. I want to know whether this fire was in port or at sea.

THE WITNESS: In port.

TRIAL EXAMINER SEAGLE: It was in port?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: How many years ago was that?

THE WITNESS: Well, I can't say exactly. I would say around eighteen years, nineteen years.

TRIAL EXAMINER SEAGLE: Do you recall what happened on that occasion?

THE WITNESS: Why, no.

TRIAL EXAMINER SEAGLE: How the fire was put out?

THE WITNESS: Just what I heard from the other ship.

TRIAL EXAMINER SEAGLE: You were not there when the fire occurred?

THE WITNESS: No, I was not on the ship. I was in this company that had the ship on which the fire occurred.

TRIAL EXAMINER SEAGLE: When a ship is moored to a dock in a port, which is part of a city, isn't the fire department of that city available for fighting fires?

THE WITNESS: The city fire department?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: Well, it is supposed to be, if you call them.

TRIAL EXAMINER SEAGLE: As a matter of fact, if you do call the fire department, they will respond, will they not?

THE WITNESS: As a rule, yes.

TRIAL EXAMINER SEAGLE: As a matter of fact, you have heard of such occasions, have you not?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: That's all.

By MR. CASTIELLO:

Q. Following that up with one thing, Mr. Norton, in the event the dock should catch on fire, isn't it a fact that the company has fire-fighting apparatus and pumps available right at the dock?

A. They have.

Q. Separate and apart from any on shipboard?

A. They have, yes, sir.

Q. You spoke to Mr. Braun, B-r-a-u-n?

A. Braun.

Q. What watch is he on?

MR. CASTIELLO: Strike that, will you?

A. He was on the four to——

TRIAL EXAMINER SEAGLE: No, just a moment. The question has been stricken.

By MR. CASTIELLO:

Q. What watch was Mr. Braun on, on July 18th?

A. He was on the four to eight, four in the morning to eight in the morning.

Q. Then he went off?

A. Then he went off.

Q. Until what time?

A. I think he came on at either eight or twelve now, I am not sure.

Q. Eight in the evening, or twelve in the evening?

A. Yes.

Q. As a matter of fact, he came on at eight in the evening, didn't he?

A. Yes, that would be more like it, yes.

Q. Did he come on watch at eight in the evening?

A. He did.

Q. The strike was over at that time, wasn't it?

A. It was.

Q. What caused the strike to be terminated?

A. I couldn't say.

Q. And you never took the trouble to find out?

A. No, sir.

Q. Not even your natural curiosity drove you to find out what caused the men to come back to work?

A. I really didn't have to find out any more than what I found out from Mr. Tracey when he told me they wanted union recognition.

Q. So you believed that the strike was over because they had gotten union recognition?

MR. CHILDS: I object to that.

TRIAL EXAMINER SEAGLE: Just a minute. Read the question.

(Question read.)

MR. CHILDS: I object, as calling for a conclusion.

TRIAL EXAMINER SEAGLE: The objection is sustained.

Did Braun leave the ship at eight o'clock in the morning on July 18th?

THE WITNESS: Leave the ship?

TRIAL EXAMINER SEAGLE: Yes. Or, did he leave the ship with the others?

THE WITNESS: He was on board. I seen him when I came back at 8:30.

By MR. LUSTIG:

Q. Was Braun one of the men that was ordered by the captain to do a specific turn to?

A. He was back there.

Q. Did you hear the testimony of the first mate, wherein he said that every man who was back there was ordered to turn to?

A. I wasn't listening to the first mate. While I was back there, the captain asked each and every individual whether they were going to turn to.

Q. That included Braun?

A. Braun was there, too.

Q. Braun didn't turn to, either?

A. No.

MR. LUSTIG: That's all.

RE-DIRECT EXAMINATION.

By MR. CHILDS:

Q. Referring to this fire-fighting apparatus on the dock, was there also fire-fighting apparatus on the ship?

A. Why, we have extinguishers, outside of our pumps.

Q. Assuming you had fire-fighting equipment on the dock, did you get any more protection against fire by having the steam up and ready to operate your fire-fighting equipment on the ship?

A. We have better results on the ship, because we have got all our hoses laid out in the proper places, and everybody knows what to do.

Out on the dock, they wouldn't know how to go about a hose, or how to hook it up.

Q. If there had been a fire on the dock, you would have needed steam in order to take the vessel up?

A. To move the vessel up.

MR. LUSTIG: I object to that, if your Honor please, as being entirely repetition.,

TRIAL EXAMINER SEAGLE: Objection sustained.

MR. LUSTIG: Sustained?

TRIAL EXAMINER SEAGLE: The objection is sustained.

MR. CHILDS: That's all.

RE-CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. Mr. Norton, do you recall on July 18th, when the strikers left the poop deck, and went out on the dock?

A. I do.

Q. You do?

A. Yes.

Q. Who was standing out on the dock when they left the ship?

A. I couldn't tell you who was.

Q. Do you remember that the master was out on the dock?

A. Somebody had told me that he went out.

Q. Did you see him out on the dock?

A. I didn't, no.

Q. Did you see the local agent of the company, Mr. Shreider?

A. I did not.

Q. All you know is that the men left the ship?

A. I know they left the ship, and I seen them when they were coming back.

MR. CASTIELLO: Incidentally, Mr. Childs, the name "Mr. Shreider" has come up several times. May we have his full name?

MR. CHILDS: Louis A. Shreider, S-h-r-e-i-d-e-r, Jr. He is a local agent of the Southern Steamship Company.

MR. CASTIELLO: The local agent?

MR. CHILDS: A local agent.

MR. CASTIELLO: Do you have more than one local agent down there?

MR. SHERRY: No. He is the local agent.

MR. CASTIELLO: He is the local agent?

MR. SHERRY: Yes.

TRIAL EXAMINER SEAGLE: The men who went on strike did leave enough steam on to take care of the auxiliary appliances, did they not?

THE WITNESS: They what, sir?

TRIAL EXAMINER SEAGLE: The men who went on strike, didn't they leave on enough steam to take care of the auxiliary appliances?

THE WITNESS: They did.

TRIAL EXAMINER SEAGLE: If a fire occurred, couldn't your equipment be attached to the steam that would ordinarily have serviced these auxiliary appliances?

THE WITNESS: It could be attached, and we could use it for a certain length of time, for a very short time.

TRIAL EXAMINER SEAGLE: For how long could you use it?

THE WITNESS: Well, I would say, using that pump for a fire, I would say it would be run down in half an hour.

TRIAL EXAMINER SEAGLE: But it would allow sufficient time, would it not, to get additional steam from the dock?

THE WITNESS: Additional steam from the dock?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: I don't know how you mean.

TRIAL EXAMINER SEAGLE: I mean, to get additional assistance from the dock.

THE WITNESS: That all depends upon how quick that fire department will come.

TRIAL EXAMINER SEAGLE: I am not talking about the fire department of the City of Houston, but the equipment which you said was available on the dock for fighting fires.

THE WITNESS: Well, I couldn't say how quick that could be done, because it was never tried down there.

TRIAL EXAMINER SEAGLE: But it is there?

THE WITNESS: It is.

MR. LUSTIG: One more question.

TRIAL EXAMINER SEAGLE: Just a minute.

MR. LUSTIG: All right.

TRIAL EXAMINER SEAGLE: I had another question. I can't remember what it was.

By MR. LUSTIG:

Q. In your twenty-seven years' experience at sea, have you ever known of any incident where, when the ship was injured by fire or by storm or any other natural ele-

ment, the crew refused to turn to in order to save the ship, whether it was in dock or on the high seas?

A. Well, no, I have not, but I don't know how it would go when they are on a sit-down strike.

MR. LUSTIG: That's all.

RE-DIRECT EXAMINATION.

By MR. CHILDS:

Q. Following my friend, the Union attorney's lead, in his question, in your experience of twenty-seven years at sea did you ever have another instance of thirteen men who refused to obey the orders of ship's officers?

A. I did not.

MR. CHILDS: That's all.

RE-CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. Can you tell us why five of the thirteen men were chosen for discharge, when the thirteen had engaged in the strike?

A. I can only tell you as to the two men I let go.

By MR. LUSTIG:

Q. Would you regard those two men as the cause of the other men going out on strike?

A. No, I don't.

Q. Or, as the ringleaders?

A. No, sir; I don't. I don't know anything about their union activities, at all.

MR. LUSTIG: That's all.

TRIAL EXAMINER SEAGLE: You said the men had gone on a sit-down strike, is that what you called it, just a minute ago?

THE WITNESS: No, I said if they had went when I was on another time I didn't know how they would act.

TRIAL EXAMINER SEAGLE: No. I mean, on this strike of the 18th, you didn't regard it as a sit-down strike, did you?

THE WITNESS: Well, I wouldn't know what I would call it.

TRIAL EXAMINER SEAGLE: The men didn't interfere with your possession of the ship, did they?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: They didn't try to stop you from putting the steam on?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Or prevent the fires going?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Or prevent the loading of the ship?

THE WITNESS: Well, they wouldn't turn on the steam.

TRIAL EXAMINER SEAGLE: I mean, they didn't interfere with the stevedores, did they?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Or with any of the officers?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Did you give any order to the men to leave the ship?

THE WITNESS: I did not.

TRIAL EXAMINER SEAGLE: Did any of the other officers give such an order?

THE WITNESS: Not that I know of.

TRIAL EXAMINER SEAGLE: That's all. Any further questions of this witness?

MR. CASTIELLO: I have just another question or two, if the Examiner please.

By MR. CASTIELLO:

Q. Isn't it a fact that the ship, while docked, at Houston, was not only the working plant of the strikers, but it was also their home?

MR. CHILDS: I object, as immaterial, if the Examiner please.

TRIAL EXAMINER SEAGLE: Objection overruled.

By MR. CASTIELLO:

Q. What is the answer?

A. Will you repeat that question?

MR. CASTIELLO: Read the question, please, Mr. Reporter.

(Question read.)

A. It is.

MR. CASTIELLO: That's all.

TRIAL EXAMINER SEAGLE: Any further questions?

(No response.)

TRIAL EXAMINER SEAGLE: The witness is excused.

(Witness excused.)

MR. CHILDS: Mr. Kuhtreiber.

ALFRED KUHTREIBER, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CHILDS:

Q. What is your full name?

A. Alfred Kuhtreiber.

Q. Where do you live?

A. 2306 San Jacinto, Houston, Texas.

TRIAL EXAMINER SEAGLE: Will you spell your last name for us, please?

THE WITNESS: K-u-h-t-r-e-i-b-e-r.

By MR. CHILDS:

Q. What is your position on the steamship, "City of Fort Worth"?

A. I am steward.

Q. And how long have you held that position?

A. Nine years.

Q. How many men have you under you as steward?

A. Three.

Q. Referring to July 18, 1938, and to the steamship, "City of Fort Worth," who were those three men, and what positions did they hold?

A. Louis Gill, cook.

Q. And who was the next one?

A. Frank Tharian.

TRIAL EXAMINER SEAGLE: Will you spell that last?

THE WITNESS: T-h-a-r-i-a-n.

By MR. CHILDS:

Q. What position does he hold?

A. He is general mess man. Then Eddie Schmidt, crew mess.

Q. How do you spell his name?

A. I am not sure how he spells his name.

MR. RUDAN: Edward W. Smith.

By MR. CHILDS:

Q. Is he the Edward W. Smith whose name has been referred to in these proceedings?

A. Yes.

MR. CASTIELLO: He wasn't here, but I will stipulate that it is.

By MR. CHILDS:

Q. What was his position?

A. Crew mess boy, he looks after the crew.

Q. What are the duties of a crew mess boy?

A. He looks after the crew's quarters, and brings their food, cleans their food dishes, and all that, and keeps clean the rooms for the engineers, the first, second and third assistants.

Q. Referring to the 18th of July, 1938, at Houston, Texas, were you on board the ship on that day?

A. No. I came on board the ship about half past nine.

Q. On that day?

A. Yes, sir; half past nine in the morning.

Q. Just tell the Examiner what you saw in your department.

A. When I came on the ship, the cook told me that our mess boy didn't turn to that morning.

Q. Didn't turn to?

A. And when I asked him where he is, they told he is up on the poop deck, so I went up and asked him, "What's the matter?"

He told me they decided to go on strike.

I said, "What about your work?"

He said, "There is no work to be done."

So I said, "I don't know why you have to go on strike. It is not necessary for you to go on strike. In fact, you have no right to go on strike, because I understand that

when you signed articles, as long as I go to sea it was that way, you sign articles for a round trip, from when you leave port to when you arrive back at the port," so I ordered him to come amidships, and he wouldn't come.

Q. You ordered him at that time to come amidships, and he wouldn't come?

A. I ordered him to come amidships and he wouldn't come. He said he would stick with the boys.

Q. Did you ask him to make up the three rooms?

A. I asked him, "What about the rooms?", and he said, "There is nothing to be done there."

Q. Did you make an examination of those rooms immediately after the conversation?

A. Yes, sir.

Q. What did you find?

A. That they have not been made up.

Q. Did you then order him to make up the rooms?

A. I went back again, and I told him to come back, and he answered that he wouldn't do it on account of he would be afraid. I told him he could stay amidships for good, and he said no, he is going to stay back aft, and he didn't make up the rooms.

Q. Did you have any further conversation with Edward Smith that day?

A. Not that I remember.

Q. Did you have any conversation with the captain, Captain Rudan, on or after July 18th, 1938, about this man Edward W. Smith?

A. Yes, sir.

Q. State as nearly as you can when this conversation, or conversations, occurred?

A. Oh, I don't know what date it was, but I told the captain, as I had told the captain already before three or four trips, I don't remember exactly what it was, that he was laying down on the job in some ways, and that my cook had told me that he refused him at different times orders which he had given him, and the cook is in charge

when I am on the ship of the steward's department; so I told the captain I would think it best to let him go in Houston—in Philadelphia, at least, for some trips, I said I was no more satisfied with him, and I had kept him lately for the reason that it was convenient for me to have him on board the ship, as he was getting along good with the crew, and that saved me any inconvenience.

Q. Did you go into any details?

A. Yes. I told the captain about different details.

Q. Now, just tell in detail what you told the captain.

A. I told him he didn't make the rooms up proper, he didn't sweep them up, he didn't wash the floors, when the dish pans were full with grease, I had to call his attention to it two or three times before it was cleaned out. That is in the crew's quarters, that he is supposed to keep those dishes clean. I guess that was all I told about him, except that he wouldn't talk to anybody, he was kind of close-mouthed.

Q. You say he wouldn't talk to anybody?

A. Yes.

Q. Was that talk in line of duty, or just social talk?

A. I told him he wouldn't answer proper, when I ordered a man, he could say "yes" or "no," and I didn't get no answer to some of the orders.

Q. Did he refuse to talk to the cook?

A. I guess he did. I don't know whether he did or not. The cook made the statement that he didn't even talk to him at all, he wouldn't pay no attention to him, and the cock was the one who told me I should let him go.

I said no, it we let him go, we might get somebody else that was worse. He had three trips at that time.

I called his attention to it at that time.

TRIAL EXAMINER SEAGLE: We want to know about it, Mr. Kuhtreiber. Suppose you tell us.

By MR. CHILDS:

Q. Referring to this complaint that he didn't talk, will you explain that further?

A. All right. If I told him to do such and such a thing, when somebody gives me an order, I say yes or no. He didn't. He didn't answer at all. He walks away. That is a certain impoliteness and rudeness on his part, which I could see was not acting right, the way we do on ships.

TRIAL EXAMINER SEAGLE: You mean he was that way all the time?

THE WITNESS: Lately.

TRIAL EXAMINER SEAGLE: What do you mean by "lately"?

THE WITNESS: I think he had some kind of falling out with the cook. I don't know about that. But it was already four or five trips like that.

TRIAL EXAMINER SEAGLE: He had been behaving that way for four or five trips?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: You mean the four or five trips previous to July 18th?

THE WITNESS: Yes, sir.

By MR. CHILDS:

Q. You say he had had some sort of a quarrel with the cook?

A. Yes, sir.

Q. Did the cook say anything to you about whether this man should be kept, or let go?

A. Yes, the cook told me why I don't let him go.

Q. That was about when?

A. That was quite a while before, I don't know exactly when, but it was at least four or five trips.

Q. Did the cook complain to you more than once?

A. More than once?

Q. More than once?

A. Yes.

TRIAL EXAMINER SEAGLE: How many times?

THE WITNESS: I am sorry, sir, I can't say, I don't remember.

TRIAL EXAMINER SEAGLE: "More than once" is very indefinite.

THE WITNESS: Five or six times, maybe, I can't say. It was more than once.

By MR. CHILDS:

Q. What is your best judgment as to how many times?
A. Well, I will make it five.

TRIAL EXAMINER SEAGLE: We don't want you to make it anything. If you don't have any recollection, say so.

THE WITNESS: I can't recall exactly, I couldn't exactly say how many times, sir.

By MR. CHILDS:

Q. Can you approximate the number of times the cook complained about this man?

MR. LUSTIG: I object to that. The witness says he cannot tell exactly, therefore, how can he approximate it?

TRIAL EXAMINER SEAGLE: I don't see how he can make any approximation.

MR. MCKAIG: He said definitely he knew it was more than once. It may have been a hundred times.

MR. CHILDS: Mr. McKaig is right. I want to get down to about how many times.

TRIAL EXAMINER SEAGLE: You wouldn't say it was a hundred times?

THE WITNESS: No, I wouldn't say even fifty.

TRIAL EXAMINER SEAGLE: Would you say a dozen?

THE WITNESS: It could be. It could be possibly a dozen.

TRIAL EXAMINER SEAGLE: But you don't remember?

THE WITNESS: I don't remember exactly how many times.

By MR. CHILDS:

Q. But it could be more?

MR. LUSTIG: I object to any further attempt to get this witness to approximate the number of times, when the witness has no independent recollection, it would be merely guesswork.

MR. McKAIG: Will you concede that he means frequently?

MR. LUSTIG: I will concede nothing.

THE WITNESS: Quite a few times.

By MR. CHILDS:

Q. Quite a few times?

A. Yes.

TRIAL EXAMINER SEAGLE: All right. Let it go at "quite a few times."

By MR. CHILDS:

Q. Now, Mr. Kuhtreiber, did you make any recommendation to Captain Rudan that this man should not be further reemployed?

A. Yes, sir.

MR. CHILDS: Cross-examine.

MR. CASTIELLO: Mr. Childs, on page 150 of the record, the name "Kirkdriver" appears as being the name of the steward.

Can we stipulate that the man now on the stand is the same person?

MR. CHILDS: We can, and do.

TRIAL EXAMINER SEAGLE: It is so stipulated.

MR. LUSTIG: And wherever else the record shows it.

MR. CASTIELLO: Yes.

CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. When did you first report to the master that Mr. Smith failed to perform his work, or did not talk to you or the cook?

A. It was about three or four trips before this happened.

Q. Is that the first time you talked?

A. That is the first time that I told the captain about it.

Q. And was that the first time you heard that Smith was not performing his duties?

A. No, sir.

Q. You heard about it before?

A. Yes, sir.

Q. How long before that time?

A. I don't know exactly. I didn't go to the captain right away, because I don't go to the captain with every little bit of thing. I had heard it before. It might have been a half a year before.

Eddie Smith has been with me for two years, and I didn't go right to the captain.

Q. This was just a little thing, wasn't it?

A. Little things amount to something by and by.

Q. So the first time you talked to the captain was about three weeks before July 18th?

A. Three trips.

Q. Three trips before July 18th?

A. Yes, sir.

Q. And each trip lasts about twenty-five days, doesn't it?

A. Yes, twenty-four days.

Q. Twenty-four days. What did the captain say to you?

A. The captain told me I could use my own discretion, if I wanted to let him go, I could let him go, otherwise, he could sign on again.

Q. And you let him sign on again?

A. Yes, sir.

Q. And he signed on three times after this first occasion?

A. Yes, sir.

Q. That you reported to the master?

A. Yes, sir.

Q. After July 18th, when did you report any infraction to the master?

A. On the way from Houston to Philadelphia.

Q. Between the 18th and the 25th?

A. Yes, sir.

Q. What day would you say?

A. I don't know.

Q. Would you say one or two days after the 18th?

A. No, I don't remember exactly which day it was. I don't want to say the day, because I don't know which day it was. It was on the trip going in.

Q. Just what did you say to the master?

A. I told the captain that this would be the end, and that I wanted to let Eddie Smith out.

Q. And that was because Mr. Smith refused to work on the 18th?

A. Yes, sir.

Q. It wasn't because he talked, was it, or refused to talk?

A. No, not for that.

Q. Not for that?

A. No.

Q. And it was not because he didn't have his dishes cleaned on these other occasions?

A. It wasn't for that, no, but it was adding to it.

When you give a man a chance five or six times in succession, and when you actually take a man, like I did with

this young fellow, against the wishes of everybody, and then give him a chance for two years, and the man goes back on you just like he did on me, when he knew I wasn't on board the ship, and he refused then to work, he should at least have waited until I came back on board the ship, he should have told me then, he could have said something. But he refused to work, knowing I wasn't on the ship, and I was absolutely going to let the man go.

Q. So that, if Eddie Smith hadn't gone on strike on July 18th——

A. He didn't go on strike.

Q. Now, wait a minute. You listen to me.

TRIAL EXAMINER SEAGLE: Just let him finish the question, Mr. Kuhtreiber.

By MR. CASTIELLO:

Q. If Eddie Smith hadn't gone on strike, or hadn't refused to work on the 18th, as you call it, you would not have discharged him?

A. That trip? I am not so sure about it.

Q. As a matter of fact, you are not so sure about anything, are you?

A. Oh, yes, I am pretty sure about some things.

TRIAL EXAMINER SEAGLE: You would go so far as to say that what he did on the 18th had a lot to do with it?

THE WITNESS: All right. The 18th was the knock-down.

TRIAL EXAMINER SEAGLE: The knock-down?

THE WITNESS: Yes, for me.

TRIAL EXAMINER SEAGLE: You mean, the straw that broke the camel's back?

THE WITNESS: Oh, yes; I don't know which way you would express it. Maybe I can't talk good enough English for that.

By Mr. Castiello:

Q. Did you report Mr. Smith's conduct to anybody but the master?

A. No, sir. I didn't have to.

Q. So you didn't?

A. No, sir.

Q. At the end of the trip, did you report it to anyone?

A. Yes, sir.

Q. To whom?

A. To Mr. Sherry.

Q. When?

A. Before we signed off, I told him that I was going to let the mess boy go.

Q. Did you tell him why?

A. Yes, sir.

Q. Why?

A. I told him that I wasn't satisfied with his work before, that I had already, on a couple of occasions, asked the captain if I couldn't let him go,—if I shouldn't let him go, but that I always decided to keep him, again, because I may let him go, and get someone worse.

Q. Eddie Smith asked you to join the union, didn't he?

A. No. He knew very well there wouldn't be no use to ask me that.

Q. Don't you remember on July 18th, when Eddie Smith asked you to join the union?

A. No, he didn't. Nobody asked me to join the union.

Q. What did the company think about the union?

A. I don't know. I don't talk to anybody from the company, except business.

Q. What did you think about the union?

Mr. Childs: I object to that.

A. I think that is a private opinion I haven't to answer. I don't think I have to answer my private opinion, what I think about the union.

Trial Examiner Seagle: Objection sustained.

MR. CHILDS: I take it, the answer will be stricken?

TRIAL EXAMINER SEAGLE: His answer had not gone far enough to indicate what his opinion would be.

By MR. CASTIELLO:

Q. Did you ever express your opinion as to the union?

MR. CHILDS: I object to that, as irrelevant.

TRIAL EXAMINER SEAGLE: Objection overruled.

THE WITNESS: Must I answer that?

TRIAL EXAMINER SEAGLE: Answer it "yes" or "no," did you express your opinion as to the union?

THE WITNESS: Yes.

By MR. CASTIELLO:

Q. To whom?

A. To all of them on the job.

Q. When?

A. On different occasions. I don't recall when, or where.

Q. What, in substance, did you say about the union?

MR. CHILDS: I object to that question on the ground it is incompetent, irrelevant and immaterial, not within the issues of this case. Among other things, this man is not shown to have any authority to speak for the company, and the testimony of a man in his position as to what he thinks about unions in general, or any particular union, is absolutely irrelevant, and confuses the issue.

TRIAL EXAMINER SEAGLE: The question now is as to what he said on board the ship about the union. I think it is pertinent. He may answer.

By MR. CASTIELLO:

Q. You have the power to recommend the hiring and discharge of people in your department, haven't you?

A. I haven't the power, but I think if I recommend a man to the captain, or to Mr. Sherry, or, if I say I don't want the man, that both of them are willing enough——

Q. To accept your word?

A. (Continuing.) —to accept my word.

Q. Now, tell us what you said about the union on board the ship.

MR. CHILDS: Same objection.

TRIAL EXAMINER SEAGLE: Objection overruled.

A. I said I belonged to the union in 1921. I went to sea in 1911.

TRIAL EXAMINER SEAGLE: Which union are you talking about?

THE WITNESS: I belonged at that time, but the union went up in the air, and I had very bad experience with that union.

TRIAL EXAMINER SEAGLE: Which union was it?

THE WITNESS: I don't know which union it was. It was the Seamen's Union in 1921.

I was three months in Roanoke, Virginia, I didn't get a cent.

TRIAL EXAMINER SEAGLE: Is that what you told the men on board the ship?

THE WITNESS: That's what I told the men on board the ship. So that is what I think about the union.

By MR. CASTIELLO:

Q. So you didn't think they were any good, did you?

A. Not for me.

Q. If you didn't think they were any good for you, why should you tell anybody else what you thought of it?

MR. CHILDS: I object to that; same objection.

TRIAL EXAMINER SEAGLE: Objection overruled.

A. I didn't tell anybody else. That is my own opinion.

By Mr. Castiello:

Q. You told this to all the men on the ship?

Mr. Childs: Same objection.

Trial Examiner Seagle: Objection overruled.

A. I don't know who was there.

By Mr. Castiello:

Q. But there were pretty many, weren't there?

A. I don't know. It wasn't only on that day it happened. I been on that ship nine years.

Q. How often would you state your opinion?

A. Whenever it came up.

Mr. McKaig: What has his opinion got to do with this issue? You might as well ask his present opinion of Austria, and what has his opinion to do with that?

Trial Examiner Seagle: I would agree that his opinion on Austria would be immaterial.

The objection is overruled.

By Mr. Castiello:

Q. When you reported to Mr. Sherry, Mr. Sherry took your recommendation and discharged Mr. Smith, didn't he?

A. Mr. Sherry didn't discharge him. The captain signed him off. I discharged him. I told him I didn't want him.

Q. Who gave you the power to discharge him?

A. The captain signed him off, and paid him off. The captain is the master.

Q. I thought you told us you didn't have the power to discharge him?

A. I didn't have the power to discharge him, but when I tell the captain I don't want him any more, the captain don't sign him on no more.

Q. You told Mr. Smith that he was through, didn't you?

A. I did, yes.

Q. Who gave you authority to tell Mr. Smith that he was through?

A. The captain had signed him off. That finished him, he didn't sign on. Then I told him, "All right, you don't go any more, you are paid off, you don't sign on."

Q. Did Mr. Sherry approve your getting rid of Mr. Smith?

A. I think he did, otherwise he would be still on the ship. I couldn't very well go against Mr. Sherry's orders.

Q. I am not asking you what you think. When you spoke to Mr. Sherry about Mr. Smith, did Mr. Sherry say, "Go ahead, fire him"?

A. I don't remember how that conversation was at that time.

TRIAL EXAMINER SEAGLE: Did you discharge Mr. Smith after you spoke to Mr. Sherry, or before?

THE WITNESS: After. I told the captain first, then I told Mr. Sherry, and the captain signed him off and paid him off, and I told him he was finished, the following day.

By MR. CASTIELLO:

Q. Mr. Kuhtreiber, you heard the testimony of Mr. Robinson and Mr. Norton, the chief engineer, didn't you?

A. Yes.

Q. Do you remember they testified about the safety of the ship, and that it was not put in danger?

A. What they said about it?

Q. Yes.

A. Yes, I heard that.

Q. Do you remember what they said?

A. Yes.

Q. Is what they said true?

A. I don't know anything about handling the ship in danger, I don't know anything about that.

Q. Mr. Witness, do you know why the boys came back to work on July 18th?

A. No, sir.

Q. Didn't you ever find out?

A. No, sir; I wasn't interested in it.

Q. Why weren't you interested in it?

A. Because it didn't interfere with me. I had one man, and I had already made up my mind he would be through, so I didn't care, as long as he went back to Philadelphia, it was all right.

Q. Didn't you ever speak to the master or any of the officers and start talking about why the strike was over?

A. No, sir. I told you before, I don't talk with any of my superiors, except in the line of business, when it is just my own business.

MR. CASTIELLO: That's all.

MR. CHILDS: Just one question.

RE-DIRECT EXAMINATION.

By MR. CHILDS:

Q. In the testimony previously taken in this case, the witness Edward W. Smith testified, page 150 of the officially reported proceedings, as follows:

> "Answer: I asked the steward why I was being fired and he replied that he didn't know. I asked him then why I wasn't fired with the rest of the men, that is, the other four, and he said he didn't know whatever." Did that conversation take place?

A. Yes, sir.

Q. What was really said there?

A. I answered him that question that way because, as I told you, I had told the captain that I would take him back later on, but, to put his head a little bit wise, I would lay him off for several trips, and then take him back later

on, so I didn't tell the boy anything except that I just let him go.

MR. CHILDS: That's all.

RE-CROSS-EXAMINATION.

By MR. LUSTIG:

Q. Was he the only man in your department, Smith, that went on strike?

A. Yes.

Q. He was the only man?

A. Yes, sir.

Q. The others did not strike?

A. No, sir.

By MR. CASTIELLO:

Q. Do you know whether the other men in your department belonged to the union?

MR. CHILDS: Objected to as incompetent, irrelevant and immaterial.

TRIAL EXAMINER SEAGLE: The objection is overruled.

A. I don't know if they belonged to the union.

By MR. CASTIELLO:

Q. You talked to them about the union, didn't you?

A. Yes, but I didn't ask them if they belonged to the union.

Q. Didn't they ever tell you they did?

A. No, they didn't. I thought they would tell me if they did belong.

MR. CASTIELLO: That's all.

MR. CHILDS: That's all.

TRIAL EXAMINER SEAGLE: Did any of the members of the crew ever complain about Eddie Smith?

THE WITNESS: No, sir. At various times the officers amidships complained their rooms was not properly made up.

TRIAL EXAMINER SEAGLE: By the "crew," I meant the unlicensed men of the crew.

THE WITNESS: No, except as I stated before, in five or six trips back, I don't remember who was it complained about the dishpans greasy, and I called his attention to that.

TRIAL EXAMINER SEAGLE: That was six trips back?

THE WITNESS: Yes, that was quite a while back. If I am not mistaken—I don't remember who it was now.

TRIAL EXAMINER SEAGLE: You don't remember who it was?

THE WITNESS: No, I don't.

TRIAL EXAMINER SEAGLE: Did Eddie Smith get along with all of the crew?

THE WITNESS: Very well.

TRIAL EXAMINER SEAGLE: Didn't you, as a matter of fact, say that he was getting along good with the crew?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You mean he was popular with the crew?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And they had no complaints about the way he treated them?

THE WITNESS: Not that I know of.

TRIAL EXAMINER SEAGLE: Was any food served on board the ship on July 18th?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: By whom was it served?

THE WITNESS: By him.

TRIAL EXAMINER SEAGLE: By Eddie Smith?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: When?

THE WITNESS: I don't know about breakfast, for breakfast I wasn't on board, but, by lunch, I asked the captain if I should serve the men, and the captain told me yes.

I told Eddie, "Are you going to serve it?" and he talked to these other fellows who was aft there, I don't know who it was, together, and they told him, "Yes, go ahead, we are going to eat."

Then he came back to the galley, it was all fixed for him, and he took it out and didn't come back no more, he carried it aft.

TRIAL EXAMINER SEAGLE: So Eddie Smith did serve the crew?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: He served them their lunch?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Also served them their dinner?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: In their regular dining hall?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: And they went down there together, is that it?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: On those occasions they left the poop deck and went down there, to eat?

THE WITNESS: I guess so. I wasn't back aft myself.

TRIAL EXAMINER SEAGLE: Do you know whether any members of the crew left the ship during the day?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Did you ever have any trouble with Louis Gill on the ship, of any kind?

THE WITNESS: Louis Gill? My cook?

TRIAL EXAMINER SEAGLE: Who is that? The cook?

THE WITNESS: That is my cook.

TRIAL EXAMINER SEAGLE: You didn't have any trouble with the cook?

THE WITNESS: Oh, I had some arguments with him.

TRIAL EAMINER SEAGLE: You did?

THE WITNESS: Oh, yes.

TRIAL EXAMINER SEAGLE: Tell us about it.

THE WITNESS: Why, they are past, it is nothing important. You see, arguments come always up.

TRIAL EXAMINER SEAGLE: How about the arguments Eddie had with the cook?

THE WITNESS: I don't know anything about that.

TRIAL EXAMINER SEAGLE: Were they any worse than the arguments you had with the cook?

THE WITNESS: I don't know that, sir.

TRIAL EXAMINER SEAGLE: I take it, by that, that arguing was not so unusual?

THE WITNESS: I don't know.

TRIAL EXAMINER SEAGLE: As a matter of fact, there is a lot of dissatisfaction on board ship, as a rule, isn't there, in the steward's department?

THE WITNESS: In the steward's department, or between the steward's department and the others?

TRIAL EXAMINER SEAGLE: In the steward's department.

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Between the steward's department and others——

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE (continuing): —it is quite frequent?

THE WITNESS: No. It happens.

TRIAL EXAMINER SEAGLE: It happens sometimes, doesn't it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did you ever have any trouble with Frank Tharian?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Of any kind?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Never had an argument with him?

THE WITNESS: Oh, yes.

TRIAL EXAMINER SEAGLE: You had an argument with him?

THE WITNESS: Yes. He was with me nine years. If he wouldn't be a good boy, and satisfactory, I wouldn't have him for so long.

TRIAL EXAMINER SEAGLE: He had been with you for nine years?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: But you had differences with him?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Sometimes you had complaints about his work?

THE WITNESS: No. He is perfect.

TRIAL EXAMINER SEAGLE: Nothing at all, about him?

THE WITNESS: No. He is prefect.

TRIAL EXAMINER SEAGLE: Yet, despite the fact he is perfect, there have been arguments?

THE WITNESS: Yes, about private matters, which didn't have nothing to do with the ship.

TRIAL EXAMINER SEAGLE: I am not interested in arguments about private matters.

THE WITNESS: Nothing about his work.

TRIAL EXAMINER SEAGLE: You never had an argument about anything that had to do with his job?

THE WITNESS: No, he was perfect.

TRIAL EXAMINER SEAGLE: On July 18th, was Eddie Smith supposed to be on duty at eight o'clock?

THE WITNESS: He is supposed to be on duty every day. He starts serving breakfast in the morning, making two of the rooms up in the morning; serving lunch, making one room up in the afternoon; serving supper at 5 p. m. That is his day's work.

TRIAL EXAMINER SEAGLE: Then he is off?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Until the next morning?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Is there any definite rule as to when Eddie Smith shall make up a berth?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: What is that rule?

THE WITNESS: It is the time when the officers go on watch. He makes the first assistant's from six to seven in the morning; he makes the third assistant's in the time after breakfast, say, between nine and ten. He makes the second's up in the afternoon, between two and three. This man is on watch from three to four.

TRIAL EXAMINER SEAGLE: Had it ever happened before July 18th that Eddie Smith did not make the berths up at the time he was supposed to, but did it at some later time?

THE WITNESS: He made the beds up, but he didn't clean the rooms up.

TRIAL EXAMINER SEAGLE: You mean on July 18th, he made the berths up?

THE WITNESS: No, he didn't go to the rooms. The rooms hadn't been touched.

TRIAL EXAMINER SEAGLE: Was that the only occasion when that particular line of berths wasn't made up at that time?

THE WITNESS: I wouldn't say that, because I didn't go always in the rooms. I didn't go every day. I just go once in a while, and check up on it.

TRIAL EXAMINER SEAGLE: That was only once in a while?

THE WITNESS: Yes, sir, when I checked up.

TRIAL EXAMINER SEAGLE: Did you consider it very important that these rooms be made up on July 18th?

THE WITNESS: Certainly. Wouldn't you like to sleep in a home-made bed next evening when you come?

TRIAL EXAMINER SEAGLE: No, I don't think I would.

THE WITNESS: Well, if he doesn't do it, I put somebody in his place to do it. Frank made them up that day.

TRIAL EXAMINER SEAGLE: Who did?

THE WITNESS: Frank made them up that day. I am responsible that those rooms are in good order.

TRIAL EXAMINER SEAGLE: He didn't prevent anyelse from making the room up?

THE WITNESS: No, he didn't go amidships, he wouldn't come amidships.

TRIAL EXAMINER SEAGLE: He just wouldn't do it at all?

THE WITNESS: No, he just wouldn't come at all.

TRIAL EXAMINER SEAGLE: That's all.

By MR. CASTIELLO:

Q. He not only did not prevent anybody else from making the beds, but he also did not prevent anybody else from serving the food, or he didn't prevent you from carrying out your duties, did he?

A. No, sir.

MR. CASTIELLO: That's all.

TRIAL EXAMINER SEAGLE: Any further questions?

MR. CHILDS: I have nothing further.

TRIAL EXAMINER SEAGLE: The hearing is adjourned to 10 a. m., tomorrow.

(Whereupon, at 4:37 o'clock p. m., Wednesday, December 21st, 1938, the hearing was adjourned to 10 o'clock a. m., Thursday, December 22nd, 1938.)

(Docketed January 3, 1939.)

Room 1432, Bankers Securities Building,
Walnut and Juniper Streets,
Philadelphia, Pennsylvania,
Thursday, December 22nd, 1938.

The above-entitled matter came on for hearing, pursuant to adjournment, at 10 o'clock a. m.

Before: WILLIAM SEAGLE, *Trial Examiner.*

Appearances as before.

PROCEEDINGS.

TRIAL EXAMINER SEAGLE: The hearing will come to order.

MR. CASTIELLO: Mr. Examiner, I received in this morning's mail the certified copy of Respondent's Exhibit No. 2. You recall yesterday we agreed it should be submitted in lieu of the original.

TRIAL EXAMINER SEAGLE: Yes. The certified copy may be substituted for the original.

MR. CASTIELLO: Mr. Childs asked me, and I am willing to stipulate that the signatures on the copy before us yesterday are authentic.

TRIAL EXAMINER SEAGLE: It is so stipulated.

MR. CHILDS: Captain Rudan.

ANTHONY G. RUDAN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CHILDS:

Q. What is your full name?

A. Anthony G. Rudan.

Q. And where do you reside?

A. 5919 Shisler Street.

Q. Philadelphia, Pennsylvania?

A. That's right.

Q. Do you hold a Master's license?

A. Yes, sir.

Q. Since what date?

A. Since June 12, 1918.

Q. And how long have you followed the sea?

A. I may be wrong in that, but does that make much difference?

TRIAL EXAMINER SEAGLE: It is 1918?

THE WITNESS: It is 1918.

TRIAL EXAMINER SEAGLE: Sometime in 1918?

THE WITNESS: Yes, I think it is June 12th, but I am not altogether sure.

By MR. CHILDS:

Q. How long have you followed the sea?

A. Since 1910.

Q. How long have you been a master in the service of the Southern Steamship Company?

A. Since 1919.

Q. Were you the master of the steamship "City of Fort Worth" at Houston, Texas, on July 18, 1938?

A. Yes, sir.

Q. What time did you come aboard the ship on the morning of Monday, July 18, 1938?

A. At 10:30 a. m.
Q. How long had the ship been in port?
A. She had been in port since Thursday.
Q. Which would be July 14th?
A. 14th, I believe, yes.

TRIAL EXAMINER SEAGLE: Just one moment. Did you say you boarded the ship at 10:30 a. m., on July 18th?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Hadn't you been on the ship on the voyage down to Houston?

THE WITNESS: Oh, yes, but I was off ship during the night.

TRIAL EXAMINER SEAGLE: The ship docked the previous evening?

THE WITNESS: On the 14th.

TRIAL EXAMINER SEAGLE: The ship had docked on the 14th?

THE WITNESS: That's right; and I happened to be off of ship that night, and I came aboard at 10:30 in the morning.

By MR. CHILDS:

Q. Just tell the Examiner what happened when you came aboard the ship about 10:30 on July 18th.

A. As I was approaching the ship, I seen, as usual, a bunch of men standing around there, around the bottom of the street, including our agent, the Southern Steamship Company agent.

TRIAL EXAMINER SEAGLE: You are referring to Mr. Shreider?

THE WITNESS: Mr. Shreider, Louis Shreider, and he seemed as though he wanted to talk to me, so, nat-

urally, I approached him rather quickly, and he proceeded to meet me, and he wanted to know where I had been.

I told him I had been in Galveston over night. He said, "We have some trouble here with your crew." He said, "I wish you had been around."

I told him, "I didn't know, I didn't have any hint of any trouble yesterday when I left, so whatever it is, we will go on and see what we can do about it."

He said, "Well, all right."

I told him, "Let's go aboard ship and see these men."

So we proceeded to get aboard ship, and I met the first mate, I asked him what the trouble was.

By Mr. Castiello:

Q. Who is the first mate?

A. Mr. Helland. He said, "The men back there refused to turn to this morning."

I said, "Why?" "What's the trouble?"

He said, "I don't know."

He said, "I guess you had better go back and see them, for yourself, see what the trouble is."

So I said, "All right." I told him to come along, and I asked Mr. Norton, who stood by there, I told him to come along with me, and Mr. Shreider, and we walked back to the poop deck, where the men were assembled.

Q. Who is Mr. Norton?

A. The chief engineer.

So, as we walked back there, all four of us together, I spoke up, I said, "What's the trouble here, boys?" And Warren, Joseph Warren, stepped forward and said, "We won't go to work," he says, "until the company straightens out the difficulties with us."

"Well," I said, "what seems to be the trouble?"

"Well," he said, "we are not allowed to have a delegate aboard the ship and see us, and we won the election here, and we don't get the proper recognition."

So I told him, I said, "In Philadelphia, we signed our articles. You have to complete this trip, and the union question should be settled by the company."

I said, "What I am concerned with now is to complete this trip."

I said, "You boys signed that agreement, which is between yourselves and me, and you go to work, and let's get this thing over with."

He said, "No, we can't do it." He said, "We feel we are justified."

I said, "I think you are acting wrong," in fact, I remarked, I said, "Some of you boys have been to sea for quite some time," and I said, "some of the other boys only been around here for the last two or three trips, that have never been to sea before, and you are leading them into trouble, they don't know what it is all about."

He said, "Oh, no, they understand it thoroughly," Warren said.

"All right, I said, "I am just warning you."

By Mr. Childs:

Q. Did you give these men any orders to go to work, to turn to?

A. Yes, I told them, "Well, I think you had better go to work," and Warren said that they wouldn't.

I asked him, "Why are you saying so much about this thing here?"

Mr. Castiello: I didn't get that.

The Witness: I asked him, "Why are you saying so much about this thing?"

He said, "Well, I have been elected spokesman for the rest of them."

I asked him, "Are you going to work or not? There is no use arguing about this thing here and now. Let's get it straight."

And he said, "No, we can't do it."

By Mr. Childs:

Q. Did you order the men to turn to collectively, or individually?

A. First, as a group, and then Warren, as the spokesman, refused to let the men go to work.

Then I asked each one individually by name, as I called him on the ship, and everyone said that they wouldn't. The only one man that spoke a little bit different than the others was Alex Braun, he said, "Well, I just got off watch now," so I couldn't say much to him in either case, because he was off watch at that time.

Mr. Childs: May I have Respondent's Exhibit 1?

By Mr. Childs:

Q. Will you look at Respondent's Exhibit 1 and see if you can—whether you can state that the thirteen men to whom you gave those orders were the men listed on Respondent's Exhibit 1?

A. Yes, sir, they are the men.

Trial Examiner Seagle: May I ask you this question now: Was there anyone else besides Braun who was not supposed to be on duty that day?

The Witness: Yes, I would say there were.

Trial Examiner Seagle: Do you know which of these men?

The Witness: We run on three watches. The deck men are also supposed to be on.

Trial Examiner Seagle: I don't want to know who was supposed to be on. I want to know who was supposed to be off.

The Witness: Off duty men?

Trial Examiner Seagle: Yes.

The Witness: Well, the engine department, I don't follow their watches very closely, but from what I heard, from the testimony here——

TRIAL EXAMINER SEAGLE: No.

MR. CHILDS: If you know.

THE WITNESS: No, I don't know.

TRIAL EXAMINER SEAGLE: Can you tell me from your personal knowledge?

THE WITNESS: I don't know, because I don't watch those men's watches down in the engine room, they handle it themselves?

TRIAL EXAMINER SEAGLE: Are you acquainted with the situation of the men in the deck department?

THE WITNESS: Yes, sir. They all should have been on duty.

TRIAL EXAMINER SEAGLE: All of them?

THE WITNESS: They all should have been on duty, yes, sir.

By MR. CHILDS:

Q. What further was said at this time between you and the members of the crew?

A. I talked the matter over with Mr. Shreider, the agent, and I told him, "It seems like we are not getting anywhere here."

TRIAL EXAMINER SEAGLE: You talked to Mr. Shreider aboard the ship immediately after talking to the men?

THE WITNESS: That's right. I told him, "We are not getting anywhere. It is sailing time, we have got to take some action around here," and we decided that we will give them an hour's time, to see if they would make up their mind to go to work, or, if they don't make up their mind by that time, we will go up and get the shipping commissioner and have him come down and see what he can do about it.

By Mr. Childs:

Q. What was the next time that you talked to the thirteen men?

A. At the expired time, which was about 11:30, I went up and talked to the shipping commissioner, and brought him down to the boat.

Q. What was his name?

A. Glenn, Mr. Glenn. I don't know his first name.

Trial Examiner Seagle: You mean you just left the boat to get the shipping commissioner?

The Witness: Yes, sir, to bring him down.

By Mr. Childs:

Q. Tell the Examiner what happened then.

A. I told Mr. Glenn that our crew down at the boat refused to go to work this morning. I said, "I wish you would come down there and read the law to them, which might take a little more effect than what I would say to them, to get those men to go to work."

Q. Did the shipping commissioner, Mr. Glenn, go on board the boat with you?

A. He did.

Q. Do you recall whether he read anything out of a book?

A. Yes, sir, he did. He read the law to them, the face of the articles.

Trial Examiner Seagle: What did he read to them?

The Witness: I can't remember just word for word, but I have it here in my law book.

Trail Examiner Seagle: In your what?

The Witness: In my law book.

Trial Examiner Seagle: You are holding in your hand a volume of the United States Statutes, are you not?

The Witness: Yes, sir.

By Mr. Childs:

Q. Are you reading from "Navigation Laws of the United States, Edition of 1931, Published by the United States Department of Commerce, Bureau of Navigation"?

A. Yes, sir.

Trial Examiner Seagle: Then you are reading from a book which consists of excerpts from the shipping laws, is that it?

The Witness: Yes, sir.

By Mr. Childs:

Q. Do you recall any particular section of the laws that he read on that occasion?

A. Yes, sir.

Q. Referring to the book which is in your hand, is what he read Table "A," which is a part of——

Trial Examiner Seagle: Pardon me. May I make this suggestion? Is the passage that he read very long?

Mr. Childs: It would take about a page.

Trial Examiner Seagle: About a page?

Mr. Childs: Yes.

Trial Examiner Seagle: May I suggest that you read that into the record?

The Witness: Not a page. Just this section here.

Trial Examiner Seagle: Will you read to us, then, what the captain read to the men—I mean, what the shipping commissioner read to the men?

By Mr. Childs:

Q. Start right in there.

A. (Reading.) "United States of America." It is a form of articles of agreement.

Q. No. Put in Table "A," first, the caption.
A. He didn't read that.

TRIAL EXAMINER SEAGLE: I want you to read only what the commissioner read to the men.

THE WITNESS: Yes, that's the idea.

"The said crew agree to conduct themselves in an orderly, faithful, honest and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of said master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore;"

TRIAL EXAMINER SEAGLE: Just read the part that the commissioner read.

THE WITNESS: I am trying to do that the best I can. "And in consideration of which service to be duly performed, the said master hereby agrees to pay the crew as wages the sums against their names respectively expressed."

I want to look this over a minute. He didn't go this far. I believe I have gone too far with that. I am pretty sure he terminated with "said crew agrees to conduct themselves in an orderly, faithful, honest and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of said master." I think he terminated at that point.

Then he proceeded and told them, "You boys know,"—he read that off out of his mind, that is, he told them out of his mind, he said, "You boys know that you are subject to being logged two days for one if you don't obey these orders."

TRIAL EXAMINER SEAGLE: Just what does that mean?

THE WITNESS: That is a deduction, if any member violates the articles, they log him, and the commissioner usually allows him two days for one. That is for minor offenses.

By MR. CHILDS:

Q. What did these men say, if anything, that is, the thirteen, or, any of them, after the commissioner had made the statement to them?

A. Joseph Warren spoke up and he said in view of the fact they have signed the articles, and that the company has been unfair to them, they didn't consider that they have done anything wrong by violating these articles.

Q. Did you take up the matter of terminating this disobedience to the orders of the ship's officers with anyone?

A. I didn't quite get that question.

Q. Did you take up with anyone the matter of bringing to an end this disobedience of orders of the ship's officers?

MR. CASTIELLO: He means the strike.

MR. CHILDS: I can't use the word "strike." That is my understanding of this situation.

A. I discussed it with the men the best I knew how.

Then we proceeded and called our attorney at Houston, and asked his advice in the matter.

By MR. CHILDS:

Q. What was the name of the attorney? Is his name Rayzor?

A. That is the last name.

Q. How do you spell the last name? R-a-y-z-o-r, isn't it?

A. Yes.

TRIAL EXAMINER SEAGLE: What is his first name?

THE WITNESS: Newton Rayzor.

By MR. CHILDS:

Q. N-e-w-t-o-n?

A. Yes.

MR. SHERRY: The firm of Royston and Rayzor.

TRIAL EXAMINER SEAGLE: How did you get in touch with Mr. Rayzor? By telephone?

THE WITNESS: Mr. Shreider phoned him.

TRIAL EXAMINER SEAGLE: At your request?

THE WITNESS: At my request. I was present at the time.

TRIAL EXAMINER SEAGLE: You mean, in Mr. Shreider's office?

THE WITNESS: That's right.

By MR. CHILDS:

Q. Now then, will you tell the Examiner how it came about that the men discontinued the practice they were following on that ship on that day, and turned to, and how the boat sailed?

A. At the conclusion of the day, probably about 5:00 o'clock in the evening, Mr. Shreider and I went to Mr. Rayzor's office.

Mr. Rayzor had a conversation with Mr. Sherry, at Philadelphia, over the phone, in which I probably heard what Mr. Rayzor said, but I didn't hear what Mr. Sherry had to say.

And, at the conclusion of the conversation——

TRIAL EXAMINER SEAGLE: You say that Mr. Rayzor spoke to Mr. Sherry?

THE WITNESS: Mr. Rayzor. So did Mr. Shreider.

TRIAL EXAMINER SEAGLE: What?

THE WITNESS: So did Mr. Shreider.

TRIAL EXAMINER SEAGLE: Both Mr. Shreider and Mr. Rayzor spoke to Mr. Sherry over the long distance telephone?

THE WITNESS: That's right.

By MR. CHILDS:

Q. All right, Captain, proceed.

A. At the conclusion of this telephone conversation, Mr. Rayzor said that he would call up Mr. Mandell, the attorney for the union.

TRIAL EXAMINER SEAGLE: How do you spell his name, do you know?

MR. CHILDS: M-a-n-d-e-l-l.

THE WITNESS: Yes.

MR. CASTIELLO: That is correct.

TRIAL EXAMINER SEAGLE: Do you know his full name?

THE WITNESS: Arthur Mandell, at least, that is the name that Mr. Rayzor referred to him and spoke to him over the phone, called him by that name.

MR. CHILDS: All right.

THE WITNESS: He spoke to him over the phone, he said, "Arthur, why don't you release these men and have them go to work?"

TRIAL EXAMINER SEAGLE: Shreider spoke to that effect?

THE WITNESS: Mr. Rayzor.

TRIAL EXAMINER SEAGLE: Will you tell us what Mr. Rayzor and Mr. Shreider said to Mr. Sherry on the telephone?

THE WITNESS: They have discussed the matter generally and told him that these men won't go to work.

TRIAL EXAMINER SEAGLE: Can't you remember the conversation more specifically than that?

THE WITNESS: It was sort of general-like, there was so much said. I wasn't present at all times, either,

while the conversation was going on. It wouldn't do me a lot of good anyhow. I could only hear one side of it.

TRIAL EXAMINER SEAGLE: Weren't you present in the office during these conversations?

THE WITNESS: Not all of the time. Some of the time I was. I left some of the time.

TRIAL EXAMINER SEAGLE: What reason did you have to leave?

THE WITNESS: I wasn't particularly concerned. All I was interested in was these men going back to work.

TRIAL EXAMINER SEAGLE: You were concerned to see that the ship sailed?

THE WITNESS: Mr. Rayzor was handling that. I heard some of it. I heard him ask him what to do about it, "What do you want us to do about this thing here?"

He said, "The best thing is," he said, "if I talk to Mr. Mandell."

I heard him say that, to see what to do about it. What Mr. Sherry said I don't know.

TRIAL EXAMINER SEAGLE: Will you go on and tell us the conversation with Mandell?

THE WITNESS: Mr. Rayzor said, "Arthur, why don't you release these men? The company isn't doing so much right now anyhow, and it is just creating additional disturbance."

He said, "As I understand, this election is up before the Labor Relations Board," or "the National Labor Relations Board, and the company is awaiting the Board's decision, and when the Board decides, there is no doubt that the company will have to abide by whatever the decision is."

TRIAL EXAMINER SEAGLE: Do you mean by that, that at that time charges had already been filed against the company?

THE WITNESS: Not this charges, but the election charges.

On the other hand, the company, I think, filed charges, as I understand it. I am not acquainted with it thoroughly.

MR. SHERRY: Arising out of the election.

THE WITNESS: The election, you see. It wasn't this question at all.

TRIAL EXAMINER SEAGLE: The election had already been held, had it not, when the strike took place?

THE WITNESS: It had been held sometime before.

TRIAL EXAMINER SEAGLE: And the union had at that time already been certified by the Board, had it not?

THE WITNESS: Your Honor, I know very little about that, excepting that the election has been held, and that the company has been withholding recognition on some men I don't know anything about.

TRIAL EXAMINER SEAGLE: And you knew that at that time?

THE WITNESS: I heard it, but I am not positive of anything.

TRIAL EXAMINER SEAGLE: You had heard about it——

THE WITNESS: At the time.

TRIAL EXAMINER SEAGLE: (continuing): —at the time of the strike?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: How long before the strike had you heard that?

THE WITNESS: I can't say just exactly; probably a few months. I don't know how long.

TRIAL EXAMINER SEAGLE: From whom did you hear that?

THE WITNESS: Just general talk, as far as I know.

TRIAL EXAMINER SEAGLE: General talk where?

THE WITNESS: Around down our way—the company.

TRIAL EXAMINER SEAGLE: What do you mean by "our way"?

THE WITNESS: Down around the company.

TRIAL EXAMINER SEAGLE: In the company's offices?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: You say "down in the company." What does that mean?

THE WITNESS: Our men down the street.

TRIAL EXAMINER SEAGLE: Does that mean in Houston or in Philadelphia?

THE WITNESS: I heard it in both places, just general conversation.

TRIAL EXAMINER SEAGLE: In the offices of the company?

THE WITNESS: No, sir. I never discussed it with the company.

TRIAL EXAMINER SEAGLE: Where did you hear it?

THE WITNESS: From the various men that maybe gather around to talk.

TRIAL EXAMINER SEAGLE: In what places? Around the docks?

THE WITNESS: Sometimes; sometimes on the boat. Nothing official at all.

TRIAL EXAMINER SEAGLE: You heard it on your own boat, on the "Fort Worth"?

THE WITNESS: What we are referring to now is that the election has been held, and that the company has appealed the election, isn't that what we are discussing?

MR. CHILDS: That's right.

TRIAL EXAMINER SEAGLE: Yes. You said you had heard it.

THE WITNESS: I heard it here and there, but I couldn't hardly name a person that I heard say it. It was just sort of discussion, like.

TRIAL EXAMINER SEAGLE: What did you hear? Will you tell me?

THE WITNESS: We heard, in fact, it had been printed in the newspaper, that the election had been won by the C. I. O.

TRIAL EXAMINER SEAGLE: What else did you hear in connection with the election?

THE WITNESS: Then we heard that the company has been appealing the election.

TRIAL EXAMINER SEAGLE: Was contesting the election?

THE WITNESS: Was contesting the election, that's right.

TRIAL EXAMINER SEAGLE: And did you also hear that, pending the contest of the election, the company was not bargaining with the union?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: You heard that?

THE WITNESS: It was just hearsay, though.

TRIAL EXAMINER SEAGLE: But you had heard that several months——

THE WITNESS: I heard that.

TRIAL EXAMINER SEAGLE (continuing): —before the strike, is that correct?

THE WITNESS: That's right.

By MR. CHILDS:

Q. At the termination of this telephone conversation between Mr. Rayzor and Mr. Mandell, was a memorandum made of the results of that conversation?

A. There was.

Q. Was it made in your presence?

A. Yes, sir.

Q. Do you have a copy of that memorandum with you?

A. Yes, sir; I have.

Q. Will you produce it?

A. I hope I didn't lose it. (Witness producing paper.)

Q. Is that a copy of a paper that I handed you in my office?

A. Yes, sir.

Q. A couple of days ago?

A. Yes, sir.

Q. And did I then tell you that I had received that paper from Mr. Rayzor?

A. That's right.

Q. And does that paper refresh your recollection as to what the memorandum was that was dictated by Mr. Rayzor immediately following his conversation with Mr. Mandell?

A. It does.

Q. Will you read it?

MR. CASTIELLO: Just a minute. May I inquire?

By MR. CASTIELLO:

Q. Who made the memorandum?

A. Mr. Rayzor.

Q. Whose writing is it in?

A. It is my own writing. I copied it from Mr. Childs.

TRIAL EXAMINER SEAGLE: From whom?

THE WITNESS: Mr. Childs had a copy of this memorandum.

TRIAL EXAMINER SEAGLE: Who is "Mr. Charles"?

MR. CASTIELLO: Mr. Childs.

TRIAL EXAMINER SEAGLE: Oh, I thought he said "Charles."

THE WITNESS: Pardon me.

By MR. CASTIELLO:

Q. Go ahead.

A. I was present when this memorandum was dictated.

Q. Do you mean at Houston?

A. At Houston.

Q. In Mr. Rayzor's office?

A. In Mr. Rayzor's office, that's right.

Q. Who dictated the memorandum?

A. Mr. Rayzor did.

Q. To whom did he dictate it?

A. To a stenographer or somebody there.

Q. Where did she make the memorandum? Did she make it on a typewriter?

A. I guess it was a typewriter; it was sort of a copy, like, you know.

Q. She just copied what he had dictated?

A. Kind of shorthand, I guess, a copy she had.

Q. Where did you get it?

A. From Mr. Childs.

Q. When did you write it?

A. Yesterday.

Q. In Mr. Childs' office?
A. Yes, sir.

TRIAL EXAMINER SEAGLE: Why not produce the copy of the original memorandum?

MR. CHILDS: Mr. Rayzor, when he is heard down there as a witness, can testify.

THE WITNESS: I can tell you the meaning of it.

TRIAL EXAMINER SEAGLE: You have the memorandum. I cannot see any reason why it should be withheld at this time.

MR. CHILDS: To the best of my recollection, I do not have a memorandum. I do have a communication from Mr. Rayzor, in which he tells me.

TRIAL EXAMINER SEAGLE: Suppose you produce that communication? I take it that it includes a memorandum, since the paper that the witness has was copied from that.

THE WITNESS: Copied from it. I practically remember the meaning of it. I just copied it to get the exact words, that's all.

MR. CHILDS: I do not have my correspondence file here, Mr. Examiner. While I think any tribunal frowns on an attorney testifying in a case, I am willing to testify, or to make a statement to the effect that Mr. Rayzor gave me the text of this memorandum.

TRIAL EXAMINER SEAGLE: Haven't you the memorandum with you? If you have, I suggest that you produce it after lunch.

MR. MCKAIG: We do not have the memorandum, at all. We merely have a letter from Mr. Rayzor, in which he says that is his memorandum.

TRIAL EXAMINER SEAGLE: Will you produce the document from which the witness says he copied the notes which he now has?

MR. CHILDS: I will ask you a question, and do not answer it until it has been ruled upon by the Examiner.

By MR. CHILDS:

Q. Do you recall, aside from the paper that you have in your hand, the text of that memorandum that was dictated by Mr. Mandell to the stenographer?

A. I recall the correct meaning of it.

Q. Do you recall the substance of it?

A. Yes, sir; I do.

TRIAL EXAMINER SEAGLE: I think, since you have the memorandum, since it is in existence, I do not see any reason for taxing the witness' recollection.

MR. CHILDS: Very well. I will produce it later.

By MR. CHILDS:

Q. Did you make any agreement with the union relating to the termination of this so-called sitdown strike?

A. No, sir.

Q. How did this so-called sitdown strike come to terminate?

A. Upon the conclusion of the telephone conversation between Mr. Rayzor and Mr. Mandell, Mr. Rayzor said to go down to the ship, that the men won't turn to, and that's all I know.

Q. Was there any understanding to the effect that no action would be taken against men engaged in the so-called sitdown strike?

A. I don't get that.

Q. Was there any agreement or understanding to the effect that no action would be taken against the men who had been engaged in the so-called sitdown strike?

A. No, sir; no agreement whatsoever.

Q. What time did you leave Mr. Mandell's office?

A. I didn't go to Mr. Mandell's office; to Mr. Rayzor's office.

Q. I beg your pardon. Mr. Rayzor's office.

A. About a quarter to seven, 6:45 p. m.

Q. And, when you arrived at the dock, what happened?

A. As we got out of the car, driven by Mr. Shreider, I saw two men walking towards the boat. I didn't know who they were, but it seems like they——

MR. CASTIELLO: Don't tell us what it seemed. If you know who they were——

THE WITNESS: No, sir.

MR. CASTIELLO (continuing): —let us have it.

THE WITNESS: I didn't know who they were, but it seemed like they were heading for the ship.

By MR. CHILDS:

Q. What did they say, if anything?

A. I asked them what they wanted.

Q. Yes.

A. In view of the conversation between Mr. Rayzor and Mr. Mandell, I suspected that they might have been sent there by the union.

Q. What did the men say?

MR. CASTIELLO: I am sorry, Mr. Childs, I will have to object here, although I appreciate the fact you would like to get the facts, if this witness cannot identify who these persons were.

By MR. CHILDS:

Q. Did these men say who they were, to you?

A. Yes, sir.

Q. What did they say?

A. They told me they were sent by the union to pass orders to the men in the ship.

TRIAL EXAMINER SEAGLE: What time of day was this?

THE WITNESS: It was just about seven o'clock, maybe five minutes to seven.

TRIAL EXAMINER SEAGLE: P. M.?

THE WITNESS: Yes, sir.

By MR. CHILDS:

Q. What further was said?

A. I said, "I haven't got any authority to let you go aboard the ship to see anybody," and I said, "Wait a while, I will talk to Mr. Shreider."

Mr. Shreider was a little ways away from me, so I spoke to him. I said, "Here, these men were sent down by the union to pass on instructions to the men on the ship, and they want to go aboard the ship."

I said, "How do we stand on that?"

"Well," he says, "if we allow one union delegate to go aboard, we have to let them all," and Mr. Shreider said, "Our ruling is that we don't."

So I told him, "We have to get these men together somehow. Supposing we ask the men to come out and talk to the delegates."

He said, "All right, we can do that."

So I proceeded to the two delegates, whoever they were, and I told them we can't allow them aboard, but we can allow a man off the ship, or the delegate representing them, out to talk to them on the pier.

They said well, that would be all right, but they wanted to talk to all of them.

So I signaled for one, he was right close by, where the ship's stern was, I signaled for Joseph Warren to come out to the dock, they wanted to see him. So I told him, I said "The men here representing the union want to talk to you."

So he jumped over to the men and spoke to them and came back to me and said they wanted to talk to all of the men together. I said, "All right, tell the men to come out and talk to them, it is all right with me."

So all of them came out and talked to the union delegates, and took their instructions, whatever it was.

Q. Did you hear the conversation between the union delegates and the men who came off the ship?

A. No, sir.

Q. Did you have any conversation with these delegates about terms on which the so-called sitdown strike was to be terminated?

A. No, sir.

Q. Did you have any other conversation with these delegates except the conversation as to these delegates getting on board the ship?

A. No, sir; no conversation at all.

Q. Did you have any conversation on the dock at that time with any members of the crew as to the terms on which this so-called sitdown strike——

A. No, sir.

Q. (Continuing.) —was to be terminated?

A. No, sir.

Q. Did you have any conversation with Warren about the terms on which this so-called sitdown strike was to be terminated?

A. No, sir.

Q. At the conclusion of this conversation between the delegates and certain members of the crew, did the men go back on the ship and turn to?

A. They went back and went to their respective duties.

Q. Captain, referring to the termination of this so-called sitdown strike, did you have any authority to speak for the company in that matter?

A. No, sir.

Q. Who had the authority?

A. I would say anybody from the president of the company down to Mr. Sherry, marine superintendent.

TRIAL EXAMINER SEAGLE: Did that include Mr. Shreider, the local agent?

THE WITNESS: Well, he hasn't got any authority, because he would not take any action without talking the matter over with Philadelphia, with headquarters, before he would do anything, and, if he had any author-

ity to undertake any enterprise, he would take it up with Philadelphia.

By Mr. Childs:

Q. As a matter of fact, Mr. Shreider was in touch with Philadelphia twice during the day?

A. Twice during the day, yes, sir.

Q. Did you at any time on July 18th, or at any time thereafter, tell any of these men that they could keep their jobs, although they had engaged in this so-called sit-down strike?

A. No, sir.

Q. On the voyage from the Port of Houston to the Port of Philadelphia, which commenced on July 18, 1938, did you receive any reports from Mr. Helland or from Mr. Norton relating to these thirteen men referred to in Respondent's Exhibit 1?

A. We have discussed the matter over.

Q. Just tell the Examiner what reports were made, and the conversations that occurred.

A. In respect to Mr. Norton, his conversation was separate, the two different departments, I would speak to Mr. Norton about his men, and again, I would speak to Mr. Helland about the deck department.

Q. Take up, first, your conversation with Mr. Norton, the first engineer.

A. I asked him what he thought about this situation down in Texas there. He said, "I am going to let two of my men go." I asked him which two were they. He said, "Fergeson and Tracey."

And, usually, he fires or hires his men, I couldn't see no reason to question him why he wanted to let them go. In fact, he is in charge of that department, and I just let the matter rest on that.

Q. Did he tell you about the conduct and records of these two men?

A. He told me that they have been on watch at the time of the commencement of this what I consider disobedience,

and if they had gone on watch at the time, that the rest of the men probably would have followed, the other watches.

Q. Did he say anything to you in particular about the conduct——

TRIAL EXAMINER SEAGLE: Pardon me. May I make this suggestion, Mr. Childs, in the interest of saving time? Were you here yesterday when Mr. Norton testified?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: You heard his testimony?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: The suggestion I want to make is that you simply ask the witness whether his testimony as to that conversation would be substantially to the same effect.

MR. MCKAIG: That would be perfectly all right.

By MR. CHILDS:

Q. Would your testimony, as to the conversations that took place between you and Mr. Norton, the chief engineer, be substantially the same as that given by Mr. Norton?

A. Practically the same, yes, sir.

Q. Did you also have any conversations relating to the record and conduct of the two men in the deck department, Mr. Warren and Mr. Pfuhl?

A. Yes, sir. I have discussed these men with Mr. Helland, the first mate, and Mr. Helland told me, he says, "I am going to let those two fellows go."

I asked him, "Why do you particularly pick those two men?"

"Well," he says, "this fellow Warren had been drinking on various occasions." He said, "In fact, he got drunk once before," I don't recall the time.

TRIAL EXAMINER SEAGLE: May I make the same suggestion with reference to this testimony?

MR. CHILDS: In this case, Mr. Examiner, there are some additional facts that the captain knows that Mr. Helland, I don't think, did know. I will try to be brief. but I think he should go into it.

TRIAL EXAMINER SEAGLE: All right.

A. (Continuing.) —So the first mate, in charge of the deck department, handled these men, and in all cases where the first mate wants to discharge any man, I don't question him, I just go ahead and discharge them. He has got to work them.

By MR. CHILDS:

Q. Do you remember whether he went into the conduct of Warren and Pfuhl?

A. Yes, sir, he did.

Q. Just tell the Examiner what he said.

A. He constantly remarked about Pfuhl and Warren, both. One of them was, he says, drinking, that is Warren; and Pfuhl, he referred to him as being careless, he said he spilled paint at various times, I don't recall just exactly when and how.

Q. Did you have more than one conversation with Mr. Helland about this matter, on the return voyage?

A. Yes, sir, we had. We discussed it more than once.

Q. Do you recall what he told you about the spilling of paint?

A. He told me he spilled the paint off a smokestack on one occasion. I usually don't personally pay much attention to those things, as times go along, but he happened to discuss it on the trip, one of the days. And he also spilled paint on the ship's side.

Q. You had more than one conversation with him?

A. More than one, yes, sir.

Q. As master of the ship, had you any other information about the record of either of these men before they were on the steamship "City of Fort Worth"?

A. Yes, sir, Pfuhl, he was aboard the ship with three different mates.

Q. Now, how far back did his service go?

A. It goes back to approximately the end of October, 1937, I think October 28, 1937, if I am correct in that.

Q. What do you say as to the reports made by the mates?

A. He served under three different mates, and each one would tell me at different times that he wasn't fast enough, he couldn't do enough work.

TRIAL EXAMINER SEAGLE: We are speaking of Mr. Pfuhl?

MR. MCKAIG: Pfuhl.

By MR. CHILDS:

Q. Will you identify the mates for us?

A. Yes. John P. O'Donnell.

TRIAL EXAMINER SEAGLE: What was that last name?

THE WITNESS: O'Donnell.

TRIAL EXAMINER SEAGLE: How do you spell it?

THE WITNESS: O'D-o-n-n-e-l-l; and Michael Kiernan.

TRIAL EXAMINER SEAGLE: Spell the last name.

THE WITNESS: K-i-e-r-n-a-n. Each one of those men——

MR. CASTIELLO: That is only two. You said three.

THE WITNESS: Well, that was including Mr. Helland.

Each one of those men, at different times, told me John Pfuhl didn't seem to put out enough. They said, "We have got a pretty good crew now," but for some reason they seemed to have an eye on him, for the amount he put out. So, my habit is usually to give him a warning, and if he don't do better, why, fire him.

Mr. O'Donnell, I think he had just one trip with Mr. Pfuhl, we let the matter drop on that trip. And no sooner Mr. Kiernan went as first mate than he brought up the question. In fact, he wanted to discharge him, but, considering he was only the relieving first mate, we thought maybe he would get along with the next mate.

Then Mr. Helland came to relieve Mr. Kiernan, Mr. Kiernan was temporarily first mate.

By Mr. Childs:

Q. Who is the steward on the ship?

A. Alfred Kuhtreiber.

Q. Does he have a license?

A. No, sir.

Q. Did he make any report to you about any of the men in his department?

A. Yes, sir. I spoke to him at various times about his men, and particularly the morning of July 18th I asked him how were his men. He said, "Eddie Smith is refusing to work with the rest of the men." He also told me at various times before——

Q. Just a minute. You said "the rest of the men." What did you mean by that?

A. The rest of the twelve men, there was twelve more besides him. He was with the rest of the twelve men.

Q. By "the rest of the men," you refer to the twelve other men mentioned in Respondent's Exhibit 1?

A. Yes, sir.

Q Just go right ahead, captain.

A. Eddie Smith's name has been with us twice, on two different occasions.

Trial Examiner Seagle: Just what do you mean by that?

The Witness: Well, he has been there, he left the ship and came back again.

Trial Examiner Seagle: When did he first come into the service of the company?

THE WITNESS: I can't recall exactly, but I would say the whole thing is inside of two and a half years. I haven't got any exact time on Eddie Smith.

TRIAL EXAMINER SEAGLE: How long was his first period of continuous service with the company, referring to Eddie Smith?

THE WITNESS: Seven or eight months, something like that, I guess.

TRIAL EXAMINER SEAGLE: Could Mr. Sherry supply the exact date?

THE WITNESS: We can give you all of that. I haven't got it with me.

MR. MCKAIG: As the Captain said, I think it was approximately seven or eight months.

TRIAL EXAMINER SEAGLE: How long was he out thereafter?

THE WITNESS: Whatever Eddie has got, I guess he has got it correctly, because he copied it out of his book.

MR. MCKAIG: It is already in the record.

MR. SHERRY: I think the first time he ever went to sea he was under this steward, Kuhtreiber.

MR. MCKAIG: May this be off the record, as to what Eddie Smith said?

TRIAL EXAMINER SEAGLE: No, you had better take it for the record.

MR. MCKAIG (reading): "What is the first time you worked for the Southern Steamship Company?" "June 22nd, 1936."

TRIAL EXAMINER SEAGLE: Well, that would be approximately two and a half years, altogether.

THE WITNESS: Something like that.

By Mr. Childs:

Q. Can you state approximately how much time he was out of the service of the Southern Steamship Company during that period?

A. It wasn't very long, I don't know whether it was one or two trips.

What was it, Ed? I will take your word for it.

Mr. Sherry: Two or three weeks or so. Mr. Smith is here.

Mr. Smith: I would say about three weeks.

The Witness: Just one trip?

Mr. Smith: Just one trip.

Mr. McKaig: He gave his continuous employment record.

The Witness: That's right. He was off one trip. I thought it was more. I wasn't sure.

By Mr. Childs:

Q. Just go on and state, in as much detail as you can remember, what the steward told you about his record and conduct.

A. He told me the first time he was with us he was a good boy, but since he came back he is not what he used to be. He runs his department, just like the first mate and the chief engineer run their departments. If they come to me and report these things to me, I usually say, "Well, get rid of them and get somebody else."

Q. Did he give any instance of carelessness on the part of Smith?

A. He discussed it.

Q. Tell us, if you can, captain, what he said, in as much detail as possible.

A. He said he wouldn't make up his rooms right.

Trial Examiner Seagle: Were you here yesterday?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Did you hear his testimony?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Is that what he told you?

THE WITNESS: That is just about what he told me, what he said here yesterday.

By MR. CHILDS:

Q. Now, then, Captain, do you have final authority in the operation of your ship?

A. Yes, sir.

Q. And when you arrived in Philadelphia, had you made a decision about letting go any of the crew who were engaged in the so-called sitdown strike in Houston?

A. Yes, sir.

Q. And who were the men whom you had decided should be let go?

A. Joseph Warren and John Pfuhl.

Q. And who else?

A. And Eddie Smith.

Q. And who else?

A. On the chief engineer's recommendation, I have agreed also it was all right for him to dispose of his other two men. He has decided it, practically, and I knew there would be quite a dispute if I told him otherwise.

Q. That is, Tracey and Fergeson?

A. That's right.

Q. So that, when you arrived at the Port of Philadelphia, you decided to let these five men go?

A. Yes, sir.

Q. And they were let go?

A. We decided on the way home.

TRIAL EXAMINER SEAGLE: You mean, you made that decision at sea?

THE WITNESS: At sea.

TRIAL EXAMINER SEAGLE: On your way up from Houston?

THE WITNESS: That's right.

By MR. CHILDS:

Q. Captain, did you write any letter to the United States Local Inspector, relating to what took place at Houston on July 18th?

A. Yes, sir.

MR. CHILDS: Mark this for identification, please.

(Thereupon, the document above referred to was marked as Respondent's Exhibit No. 3, for identification.)

MR. CHILDS: Will you mark this one Respondent's Exhibit 4, for identification, and this one Respondent's Exhibit 5, for identification?

(Thereupon, the documents above referred to were marked as Respondent's Exhibits Nos. 4 and 5, respectively, for identification.)

MR. CHILDS: And will you mark this Respondent's Exhibit 6, for identification?

(Thereupon, the document above referred to was marked as Respondent's Exhibit No. 6, for identification.)

By MR. CHILDS:

Q. I show you Respondent's Exhibit 3, for identification, and ask you whether that is a carbon copy of a letter sent to the United States Local Inspector on or about July 26, 1938?

A. Yes, sir, that is my signature on it.

Q. That is your signature on the carbon, Respondent's Exhibit 3 for identification?

A. Yes, sir.

MR. CHILDS: I offer that in evidence.

MR. CASTIELLO: Since the letter is addressed to the local inspector, who is not a party to these proceedings, I have no way of knowing whether or not this letter was actually sent.

In the ordinary proceeding, copies of letters are introduced which have been sent to one of the parties to the proceedings and he is in a position to have the original. I am not in that position, so I think I have an objection.

MR. CHILDS: Of course, the original of this document is in the possession of the local inspector, and it may be questioned as to whether we should subpœna the document, and I understand that when documents are requested from these local inspectors, it is necessary for the inspector to obtain authority from Washington to produce the document.

I am ready to do all those things if the attorney for the Board insists upon his objection.

TRIAL EXAMINER SEAGLE: You did not personally mail this letter, did you?

THE WITNESS: To the inspector? Yes, sir.

TRIAL EXAMINER SEAGLE: Did you personally dictate this letter to a stenographer?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Who mailed it?

THE WITNESS: I carried it up myself, in person, to the local inspector, in Philadelphia.

TRIAL EXAMINER SEAGLE: You mean, you delivered it in person?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: You carried it up there?

THE WITNESS: I carried it up there. I wanted to have a little advice in the matter.

TRIAL EXAMINER SEAGLE: And gave it to the inspector?

THE WITNESS: And gave it to the inspector.

TRIAL EXAMINER SEAGLE: What is his name? It does not bear any name, it is not addressed to any specific inspector.

THE WITNESS: No, sir. Local inspector.

TRIAL EXAMINER SEAGLE: To whom did you give the letter?

THE WITNESS: I handed it to Captain Frank Damkey.

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion outside the record.)

MR. CHILDS: Will the attorney for the Board admit that on July 26, 1938, Captain Rudan reported, in writing to the United States Local Inspector, Bureau of Marine Inspection and Navigation, that the thirteen men listed in Respondent's Exhibit 1, on July 18th, at Houston, Texas, while in a healthy and sober condition, had deliberately refused to perform their duties, and that from 8:00 o'clock a. m. to 7:00 p. m. each one of these members refused to obey anyone connected with the ship's or company's officials, and at 7:00 o'clock p. m., when ordered by union delegate, they resumed their duties, and that upon the arrival at Philadelphia the captain did not log any of the men, the reason being leniency, and that he had let out five of the men because of their unsatisfactory behavior; and that about 8:00 o'clock on the morning of July 26th, the other eight men quit the ship, and the company proceeded to replace all the thirteen men.

MR. CASTIELLO: No, I will not stipulate with you on that.

TRIAL EXAMINER SEAGLE: How is the making of a report to the local inspector in any way relevant to the issues of the proceeding?

MR. CHILDS: May we discuss this off the record?

TRIAL EXAMINER SEAGLE: No, on the record. What difference does that make, what he reported to the local inspector? How does that in any way affect the issues of this proceeding? Quite apart from the technical question as to whether this copy ought to be received.

MR. MCKAIG: It emphasizes the serious view of this situation that we took.

TRIAL EXAMINER SEAGLE: I have no doubt that you did.

MR MCKAIG: That really goes to part of the issues here. In fact, the issue here is whether we were justified in not re-signing these five men.

TRIAL EXAMINER SEAGLE: I don't think the fact you reported what had happened at Houston to the local inspector is in any way relative to the proceeding.

I think, however, that there are other objections to that letter, of a technical nature.

MR. CHILDS: Will the Board's attorney waive the fact that we are not offering original of Respondent's Exhibit 3?

MR. CASTIELLO: As to those letters, Mr. Childs, and as to all of them, my objection to their admissibility, even though they were in the original form, is that they are incompetent, irrelevant and immaterial.

MR. CHILDS: Will you waive the objection that what we have produced here is a carbon copy, not the original?

MR. CASTIELLO: I would like to, but I am not in a position to do so. You appreciate my position.

TRIAL EXAMINER SEAGLE: Frankly, I don't think I would be very technical about these letters, or insist on your production of the originals, if I thought they were relevant to the issues, and if I did not think there were other objections, I would not sustain the objection on that narrow technical ground, in view of the Captain's testimony that he did write and deliver this letter to Captain Dankey here, of Philadelphia.

MR. CHILDS: Then, Mr. Examiner, wouldn't it be in order for me to suggest that the Board's attorney waive one point, that I have produced here a carbon copy and not the original of the letter?

MR. CASTIELLO: I am not in a position to waive that, because I haven't the originals, I don't know whether they are the originals. But, if this will be of any help to you, may I suggest that you develop from the witness that he did send certain letters, and what the substance of those letters was?

MR. MCKAIG: I think that is on the record, isn't it?

MR. CASTIELLO: That would serve your purpose then, I should think.

TRIAL EXAMINER SEAGLE: I do not see that the taking of that testimony will add anything to the record. As I said, I don't think the information he imparted to various persons is in any way relevant to the issues in the proceeding.

MR. MCKAIG: Only to this extent: That it emphasizes the fact we regarded this matter as very serious.

TRIAL EXAMINER SEAGLE: I don't think anybody would doubt that.

MR. CHILDS: There is this, too, your Honor:

MR. MCKAIG: I mean, very serious in regard to the continued employment of these men.

MR. CHILDS: We could, of course, as the phrase goes, in nautical language, lifted the certificates of these men, and we could have made deductions in pay, we could have taken away their certificates. We did not do that. The reason we didn't the Captain will explain.

TRIAL EXAMINER SEAGLE: That is a totally different question; but I do not see that the fact you communicated what had happened down in Houston to somebody else is relevant.

By MR. CHILDS:

Q. Now, Captain, referring to these thirteen members of the crew, did you——

TRIAL EXAMINER SEAGLE: Pardon me. Before you finish your question, perhaps I ought to formally rule that the offer of this letter, marked Respondent's Exhibit 3 for identification, is rejected, and the objection is sustained.

I would suggest that you turn that letter over to the reporter, who will retain it as a rejected exhibit.

MR. CHILDS: I would like to speak off the record for a minute.

TRIAL EXAMINER SEAGLE: All right.

(Discussion outside the record.)

MR. CHILDS: Your Honor, I am prepared to obtain and offer in evidence the original of the letter, Respondent's Exhibit 3 for identification, but I do not intend to do so, as I understand that the Examiner would adhere to his ruling that the letter is incompetent and irrelevant.

TRIAL EXAMINER SEAGLE: Yes, I would adhere to my ruling on that ground, as well as others which I

have not stated, and which I do not think I am required to state; but I do wish to make it clear that these reasons have nothing to do with the failure to produce the original.

By Mr. Childs:

Q. Captain, referring to these thirteen men that are named in Respondent's Exhibit 1, did you make any entries in the log book of the ship relating to the conduct of these men at Houston on July 18th?

A. Yes, sir.

Q. And what were those entries?

A. They were entries merely of form. We have not officially filed charges against these men to deduct any wages from them, other than to enter their names in the official log book as a matter of record.

Q. And what was the substance of the entry made?

A. We have entered the names, as to their ability, conduct, and so forth.

Q. And what was stated about this conduct at Houston on July 18th?

A. We stated that the men have refused to work on that particular day from 8:00 a. m. until 7:00 p. m., as near as I can remember.

By Mr. Castiello:

Q. Do you have that log book with you?

A. I think it is here. Haven't you got it here?

Mr. Childs: May I have this marked?

(Thereupon, the book above referred to was marked as Respondent's Exhibit No. 7, for identification.)

By Mr. Childs:

Q. I show you Respondent's Exhibit 7, for identification, and ask you——

Mr. McKaig: Hadn't you better read that in?

MR. CHILDS: Yes.

MR. McKAIG: I think the Commissioner wants that returned.

MR. CHILDS: This belongs to the Captain.

TRIAL EXAMINER SEAGLE: I don't think it is necessary to put in the log book. If you will merely exhibit it to counsel it will be sufficient.

By MR. CHILDS:

Q. Will you state what the entry that you made was, in this log book?

MR. CASTIELLO: First, may I ask the Captain?

By MR. CASTIELLO:

Q. Did you make the entries?

A. Yes, sir.

Q. That is your handwriting, all the way through?

A. Yes, sir, my handwriting.

By MR. CHILDS:

Q. Just read it, will you?

A. On July 18th, at 8:00 a. m., the members of the crew at Houston, Texas, listed on pages 5 and 6—this refers to page 12—have refused to report to their respective duties or stations. Each member named on page 5 and 6 has been ordered separately, as well as in a group, and in all instances they have refused to perform their duties from 8:00 a. m. to 7:00 p. m.

Q. That was signed by whom?

A. A. G. Rudan, Master; Odd Helland, First Mate; Joseph A. Norton, Chief Engineer.

Q. The men referred to were the thirteen men listed on Respondent's Exhibit 1, is that right?

A. That's right.

Q. Now, Captain, you say you did not make any deductions of wages against these men. Why was that?

A. Just my policy. I have been master for twenty years, and I never logged a man yet.

TRIAL EXAMINER SEAGLE: May I ask, was this entry in the log book made immediately after?

THE WITNESS: Before the ship arived.

TRIAL EXAMINER SEAGLE: It was made during the voyage at sea? Do you know whether it was made the day after the ship sailed?

THE WITNESS: It was made some'ime between Houston and Philadelphia.

TRIAL EXAMINER SEAGLE: All right.

THE WITNESS: I can't recall the day.

We have to make those. We have twenty-four hours after the ship arrives, but we always fill them before the ship arives. I don't remember just what date.

TRIAL EXAMINER SEAGLE: Was it made before or after your decision to discharge five of the crew?

THE WITNESS: It is pretty hard for me to say that, and to be sure I am telling the truth.

We had decided on the way North. This log book has to be filled. It most likely was made after we had decided to discharge the men. I am pretty sure it was, but I am still hazy about it.

TRIAL EXAMINER SEAGLE: Your best recollection is, it was made after?

THE WITNESS: After, that's right.

By MR. CHILDS:

Q. Had you ever logged your men?

A. Never.

Q. Did you notify the United States Local Inspectors about the conduct of these men?

A. Yes, sir.

Q. About what date?

A. It was the 26th—the day after. They were paid up on the 25th. It was the next day.

Q. July 26th?

A. That's right.

Q. Did you ever attempt to take away the certificates of these men?

A. No, sir.

Q. Why not?

A. Just a matter of personal feelings towards men. I am of the opinion, if they cannot work for us, they might work somewhere else.

Q. Have you ever, in your experience as a captain, instituted procedure to take away the certificate of one of the crew?

A. No, sir, I have never been shipmates with anyone that done it. But it has been done.

Q. But you don't do it?

A. No, sir, I don't do it.

MR. CHILDS: Cross-examine.

CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. In the beginning of your testimony, you say when you were returning to the ship about 10:30, Mr. Shreider asked you where you had been, there was trouble on the ship, and you told him that you had no hint of the trouble, yesterday.

A. That's right.

Q. These men who comprised the strikers had always been, in your opinion, competent seamen, had they not?

A. Up until that time.

Q. Up until that time?

A. As to their conduct as men.

Q. As to their conduct?

A. Yes.

Q. Did Mr. Shreider tell you what the trouble was?

A. He merely was more concerned as to where I had been, and why I didn't let him know where I was, so he could get hold of me, and so forth, before he proceeded to tell me that they did have the trouble.

Q. Did he tell you what the trouble was?

A. I asked him what was the trouble, and he said, "Your crew refuses to work."

Q. Did he tell you why?

A. No, sir.

Q. Did you ask him?

A. I didn't ask him, either. I told him, quickly, I said, "Let's go up and see what the trouble is."

Q. Did you ask him what he had done to try to relieve the trouble aboard ship?

A. After we got aboard ship, I asked him—no, I didn't, either. I would like to correct that.

Q. Go ahead.

A. I didn't ask him anything. I like to be as truthful as I can about it.

Q. When you went on the ship, Mr. Warren was the spokesman for the crew, was he not?

A. That's right.

Q. Didn't Mr. Warren, in answer to your question as to what the trouble was, and in answer to your warning that the men were under articles, tell you that they were on strike?

A. He didn't never mention the word "strike."

Q. Do you mean to tell me that Mr. Warren never told you they were on strike.

A. Never. Maybe because it was a coincidence, or something; it was just a question of, "Will you work," or, "Will you not work?"

Q. Didn't they give you your reason for not working?

A. Yes, sir.

Q. What was their reason?

A. Their reason was, that they had an election.

Q. Yes.

A. And that they won it, and that the company refuses to abide by it.

Q. But your testimony is he never told you they were on strike?

A. It just so happened he never mentioned the word "strike" to me.

Q. Did Mr. Warren tell you that if he got recognition for the union, they would go back to work?

A. He didn't say that. That was the point, however, I think, and if we would have recognized them, most likely they would have went back to work, or they would have conceded our demands.

Q. Do you remember telling the crew on that day that the election was still in the hands of the Labor Board?

A. I told them about it.

Q. Can't you search your memory and tell us who told you that the election was still in the hands of the Labor Board?

A. There had just been general discussion. The fact remained that the election had been held, and there has been some time gone by, and we still continued on the same basis as we had before, therefore, the company had not recognized the election.

However, I can't just name the person that had said it.

Q. Would you say it was officials of the company who told you that?

A. No, sir, that is something that never has taken place.

Q. Do you understand what I mean?

A. I am positively sure about that. You mean the higher-ups in the company, the officials; Mr. Sherry, for instance, he was one of the officials.

Q. Did Mr. Sherry tell you?

A. He never told me.

Q. Where did you get your information?

A. Just hearsay.

Q. From whom? Can't you tell us?

A. I can't, I just can't tell you.

Q. Was it from the crew itself?

A. Just general talk, that's all I can say. I couldn't name a person that had told me. Just as if somebody got hurt on the street, and you passed the word around.

TRIAL EXAMINER SEAGLE: But you had heard this more than once, Captain, hadn't you?

THE WITNESS: I had heard it more than once.

TRIAL EXAMINER SEAGLE: And you heard it from a lot of people, you told me sometime ago?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: Where did you hear it? Can you at least tell us that?

THE WITNESS: Amongst the men and the company.

TRIAL EXAMINER SEAGLE: What do you mean by, "the men and the company"? What are you referring to?

THE WITNESS: General; men down there, that work.

TRIAL EXAMINER SEAGLE: You mean, somebody in the company's offices?

THE WITNESS: Somebody on the ship. No, I don't think I ever heard it in the office.

TRIAL EXAMINER SEAGLE: You heard it on the docks?

THE WITNESS: I heard it on the docks, that's right.

TRIAL EXAMINER SEAGLE: In Houston?

THE WITNESS: Probably both places.

TRIAL EXAMINER SEAGLE: In Philadelphia?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: Were those people connected with the company in some way?

THE WITNESS: In some unofficial way.

TRIAL EXAMINER SEAGLE: What do you mean, in some unofficial way? Either they were or were not connected with it officially.

THE WITNESS: I would say some men who didn't have any authority to discuss the matter, or have any authority to handle the matter.

TRIAL EXAMINER SEAGLE: Did you ever hear it from members of the crew?

THE WITNESS: I have.

TRIAL EXAMINER SEAGLE: On the "Fort Worth"?

THE WITNESS: I have.

TRIAL EXAMINER SEAGLE: From which members of the crew?

THE WITNESS: I couldn't say I didn't pay attention enough about it to remember it.

TRIAL EXAMINER SEAGLE: How long before July 18th did you hear that from members of the crew?

THE WITNESS: Probably from the time the election was decided upon, from that time until this came on.

TRIAL EXAMINER SEAGLE: What did these members of the crew tell you?

THE WITNESS: Well, they wouldn't tell me. It would sort of be a discussion. I heard they won the election. You would hear them say that, and that one of the lodges has been recognized. I don't know whether they spoke officially, or whether they knew

what they were talking about, or anything else; just a lot of useless conversation, I would call it.

TRIAL EXAMINER SEAGLE: Who are the persons normally on the docks?

THE WITNESS: Well, the men docking there, or working, the stevedores.

TRIAL EXAMINER SEAGLE: Would you say you also heard it from the stevedores?

THE WITNESS: Well, probably a man working on one of the other boats, I don't know.

TRIAL EXAMINER SEAGLE: Did you also hear it from stevedores?

THE WITNESS: I might have. I can't say for sure.

TRIAL EXAMINER SEAGLE: You say you can't recollect from whom you heard it?

THE WITNESS: No, sir; I can't.

TRIAL EXAMINER SEAGLE: But you can definitely recollect you did not hear it from Mr. Sherry?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: What makes you so sure of that?

THE WITNESS: I would definitely remember any items Mr. Sherry told me, because we would discuss things, I would pay definite attention to what he is talking about.

TRIAL EXAMINER SEAGLE: Are you equally positive you never heard it from Mr. Shreider?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Or from Mr. Rayzor?

THE WITNESS: Yes, sir; I never seen Mr. Rayzor, probably, for a year or two, until this thing came up.

TRIAL EXAMINER SEAGLE: Did you talk to any union delegates, either here or in Houston?

THE WITNESS: Never, unless I talked to them and didn't know who they were.

By MR. CASTIELLO:

Q. Do you remember these two men that you saw on the dock, on your way back from Mr. Rayzor's office?

A. There were two men.

Q. Who said they were from the union?

A. That's right.

Q. Had you ever talked to them before July 18th?

A. I doubt very much if I did. I don't recall their faces. It was kind of dark in the evening, at the time, anyway, and I was rather busy, in trying to get the thing straight, I didn't pay any attention to any conversation of that kind.

Q. Didn't you also hear that the election was held, and that the union won it? Did you hear that?

A. That was published in the papers.

Q. You heard that part?

A. Yes.

Q. You also knew that the company was filing objections to the election, didn't you?

A. That's right.

Q. Where did you learn that?

A. As I said before, I don't know where. I just heard about it, around the dock some place; I don't know how.

Q. Did you know what those objections were?

A. I don't know anything about it.

Q. Did you know that the Board had disposed of those objections, and certified the union?

A. I never heard of it.

Q. You never heard that, did you?

A. Never heard of it.

Q. Isn't it a fact that you left the impression with the crew that this election was still in the hands of the Board, and there was no final decision?

A. That is what I heard, I told them I heard that. I didn't know officially.

Q. Didn't you think it was a matter of sufficient importance to get definite information from your superiors?

A. No.

Q. A matter like that, affected the very working of the personnel on your ship, didn't it?

A. It does; but when I get a complete crew, and they are able to do their work, that is all I am concerned about. The question of settling the union problem is up to the company. I don't know anything about it.

Q. You told Mr. Warren that, "You have been on the ship a long time, and some of the boys are here a lesser time than you, and perhaps they don't know what they are doing"?

A. Warren wasn't on the ship a long time, he has only been there, I think, two or three trips, but he has been to sea longer.

Q. You said substantially what I said?

A. Yes, I referred to that.

Q. What do you mean by that?

A. I mean by that, that the boys had just gone to sea, had just got themselves a job, I didn't think it was right for the older seamen to drive a bunch of boys out of a ship like that into trouble. That was my personal view.

I may have been wrong, but I merely thought that these boys had just began going to sea, and due to that leniency, they were permitted to remain on the ship, because they were led into trouble by someone else.

If they wanted to, they could quit.

Q. What trouble are you speaking of now?

A. What I consider disobedience, taking the ship away from the master. That is practically what happened.

Q. Warren told you they knew what it was all about?

A. He said they knew what it was all about.

Q. When you were speaking to these men, you were speaking as the master of the ship, weren't you?

A. That's right, strictly as the master of the ship.

Q. And what you said to them was just as though the company itself were speaking, isn't that correct?

A. I wouldn't say that, because the company represents seven ships, and I only represented one, subject to the company's approval.

the company's approval.

Q. But you are the master of the ship?

A. Of the ship.

Q. And have complete control of it?

A. Not complete control. I can be removed.

Q. Let us not misunderstand one another.

A. On that day I was, yes.

Q. The master is the boss of the ship, so to speak?

A. That's right.

Q. You said that you spoke to each one individually. What did you say, substantially, to each one?

A. I asked, "Well, boys, are you going to work, or you ain't?"

Q. You said you spoke to each fellow.

A. I will answer your question.

Q. Excuse me.

A. When Warren spoke for the lot, then I started from my right side, they were surrounding around me, and I proceeded to call them by their names, "Are you?" And, "Are you?", and "Are you?" Each one said "No," "No," "No," and so forth, until I completed the thirteen men.

Q. Then you came to Alex Braun?

A. He was about the middle of the group, the steering gear, back there aft, he was laying up on top of there. When I came to him, he said, "I just got off the watch at 8:00 o'clock."

Q. Did he tell you that he was also on strike?

A. He didn't discuss the matter any further. All he said was he just got off the watch, and I let it go on the strength of that.

Q. What was his watch that day?

A. I understand it was from 4:00 to 8:00. He got off at 8:00 o'clock in the morning.

Q. When was he to resume his watch?

A. He should have gone on at 4:00 o'clock in the afternoon.

Q. That is correct. Yesterday, Mr. Helland, I believe, said that his watch was to 8:00 p. m.

A. Mr. Helland knew nothing about him. Mr. Norton.

Q. Mr. Norton said his watch commenced at 8:00 p. m. that evening, but the fact is, it commenced at 4:00 o'clock that afternoon.

A. I would take it it did, he got off at 8:00 a. m. It may have been an error on the part of Mr. Norton.

Q. I think it was at 4:00 o'clock that afternoon, Mr. Braun did not resume his watch?

A. I heard he didn't.

Q. You heard it?

A. I heard it. There was no official report made. In fact nobody out of these thirteen men went back to work when they should have gone.

Q. Neither did Mr. Braun?

A. Not that I know of.

Q. You say this was not an official report. Did you receive any official reports from any one of your officers, or from any one of the men?

A. It wasn't a matter of reports. It was a matter of discussion.

Q. Is that what you mean by official reports, something in writing?

A. Well, I don't know. A fellow cannot report an item —it depends on what the importance of the problem is, or the item is, whether it is considered official. However, neither one of the thirteen men did go to work until it was agreed upon by someone other than me.

Q. All of the thirteen men, in your opinion, were equally guilty of disobeying orders, weren't they?

A. Insofar as that one day was concerned, yes.

Q. You did not consider that any one man was any more responsible for the action than someone else, did you?

A. They all worked together, and it is pretty hard for me to say, except probably the spokesman for them, he had some lead to it, but I can't say for sure.

Q. He had some lead to them?

A. He might have led the men, but I can't say for sure, because I don't know what their plans were.

Q. You say you talked to Mr. Shreider on board the "Fort Worth" that day, and you told him that sailing time would be here soon, and that it would be a good idea to get the boys back to work?

A. To get the matter straight, yes.

Q. What time was this when you had this conversation with Mr. Shreider?

A. Right after the shipping commissioner came aboard.

Q. That was about 11:30, was it not?

A. It was about 11:45. They gave the men until 11:30, then got the commissioner and brought him aboard. Then came the conversation with the commissioner. It was then almost noontime, and the men still held their decision, held their attitude, and wouldn't go back to work.

Then I spoke to Mr. Shreider, and told him we had better make some preparation, because it was getting to be sailing time, we had better do something about it.

Q. It wasn't sailing time yet, was it?

A. It was sailing day.

Q. It was sailing day?

A. And any legal measure you want to take usually is closed at 4:00, or so, and you certainly have to get busy if you want to do anything about it.

Q. What do you mean by "any legal measure you want to take"?

A. An attorney might close his office at 4:00 o'clock, if you wanted to discuss the matter.

Q. Is that what you mean by "legal measure"?

A. You might say that.

Q. You didn't fire any of these boys that day, did you?

A. That day?

Q. Yes.

A. No, sir.

Q. Did you tell them they would be fired for their action?

A. I didn't tell them anything.

Q. You didn't speak of firing them at all?

A. Carried on a routine of work, just like any other time.

Q. You came back to these men on several times during the day, after having given to them already an hour or so to make up their minds, isn't that right?

A. No, I haven't. I gave them one hour, and when this one hour expired, the shipping commissioner told that to them, and we got that end of it clear, and then, after that, I ran across Warren, farther towards amidships than any other, and I asked him, "Why don't you boys go to work?" or something like that.

He said, "No, we are still hanging together."

Q. No, what did he say to you. He said, "We are still on strike," didn't he?

A. No, he never said the word "strike" to me, Mr. Castiello, he never did. If he did say so, I would tell you, but he didn't say so.

TRIAL EXAMINER SEAGLE: Did anybody else use the word "strike" during that day?

THE WITNESS: I heard it discussed generally.

TRIAL EXAMINER SEAGLE: Any of the ship's officers, in particular?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Didn't Mr. Helland come and tell you that some of the men were on strike?

THE WITNESS: No, sir. He said they refused to go to work this morning, that is what he told me.

By Mr. Castiello:

Q. Do you recall the chief mate's testimony, Mr. Helland's testimony?

A. Yes, sir.

Q. In which he said the ship sailed that day at 9 o'clock?

A. That's right.

Q. And that the stevedores had finished loading about twenty minutes before that time?

A. About that time?

Q. Is that correct?

A. That is correct.

Q. So the sailing itself was not delayed, was it?

A. Not at all, no, because the men went to work in sufficient time to clear.

Q. When Mr. Warren, after you had spoken to him about the agreement, said that the company has been unfair to the men, did he go on and explain what he meant by unfairness?

A. He said that they won the election, as I understood it, I think, and that they refused to recognize them, and so forth, and he thought that he was right, or rather, he spoke for the men, that they were right, to violate the articles, if the company had done something that was wrong.

On the other hand, I told him that I was not concerned with what the company had done, I was concerned with that ship, and the articles were between the men and me.

Q. He said the company was unfair, because it refused to recognize the union?

A. That's right.

Q. And it refused to deal with the union?

A. That's right.

Q. He also told you that the company had refused to enter into an agreement with the union, did he not?

A. He probably has, I don't recall just everything that was said.

Q. Did you know, Captain, that the Union had asked the company on several occasions before July 18th to recognize them?

A. I don't know anything about it.

Q. Didn't you hear those rumors——

A. Never.

Q. (Continuing.) —amongst the others?

A. No, I never knew anything about it.

Q. Didn't you hear the crew, on ship, pass remarks that they are having a hard time getting recognized?

A. I heard a discussion, as I have discussed the matter a while ago, which is strictly a rumor, that I didn't know anything about officially.

Q. But you did hear rumors of that sort?

A. I overheard a rumor, that's right.

Q. When you heard rumors of this kind, didn't anything impel you to speak to Mr. Sherry, or one of the higher-ups in the company——

A. No, sir.

Q. (Continuing.) —about this matter?

A. To be frank about it, I would like to leave that pier as soon as I can, and go home, and I am getting in trouble with Mr. Sherry that way, more than any other, to get home.

Q. Do you think you would have gotten into trouble with Mr. Sherry if you had spoken to him about the men wanting to get recognition?

A. I think you could get into trouble with anything, with Mr. Sherry.

Q. This was an important matter?

A. It was, from the company's standpoint.

Q. You are part of the company, aren't you?

A. I am part of the company, but, as I said before, you [illegible] ne twenty-seven men on a ship, that are competent, that are nice fellows, I am a nice fellow with them, it makes no difference who they belong to, or how.

Q. You would report to Mr. Sherry anything that occurred, of importance, aboard the ship, would you not?

A. I might have, if it directly concerned me, that is, if it is my business.

Q. Suppose it concerned the crew, that would also concern you, wouldn't it?

A. That's right.

Q. And, when you heard what you term rumors about the election having been won, and no recognition having been given by the company, didn't you think that was serious enough to speak to Mr. Sherry about?

A. No, I didn't. Because, in the first place, I don't care, as long as I have got my crew, and a good crew, I don't care.

Q. Now, there came a time when you went to Mr. Rayzor's office. Can you give us now anything that you recall that Mr. Rayzor or Mr. Shreider said over the telephone?

A. The little I can recall, Mr. Rayzor thought the only way to handle the matter was to talk to Mr. Mandell. If I can recall correctly what was said over the phone, he said, "Any agreement I might make wouldn't necessarily be binding. But," he says, "you can release these men, and then we can talk the matter over some other time, and whatever the agreement is, if there is an agreement, we will let you know," or words to that effect, anyhow.

Q. After he had finished talking, he and Mr. Shreider were finished talking to Mr. Sherry over the long distance phone, you three gentlemen discussed what Mr. Sherry had to say, did you not?

A. As near as I can understand, Mr. Rayzor said that Mr. Sherry had agreed to let him talk the matter over with Mr. Mandell.

Q. Had agreed to let who talk the matter over?

A. Mr. Rayzor.

Q. And did he have anything further to say than that?

A. No, that was all. We was in a hurry to get to the boat, and the question was to release these men. We didn't discuss the matter any more.

Q. How long were you up in Mr. Rayzor's office?

A. I would think it was probably about fifteen or twenty minutes, by the time we put in the Philadelphia call and got through talking it may have been about fifteen minutes, maybe twenty, I am not sure, now.

Q. And you cannot give us any more of the conversation?

A. No more at all.

Q. Nothing more than you have?

A. Part of the time I wasn't even present, because I considered that Mr. Rayzor was handling the case, and anyhow, it didn't make much difference to me what he said, I couldn't hear what Mr. Sherry had said on the other end.

Q. But you were concerned with what was being said?

A. I was concerned to get the ship sailed, and get the men to go to work, and sail the ship.

Q. Now, Mr. Rayzor called Attorney Mandell, of the N. M. U., at Houston, did he not?

A. He called him. I don't know where he called him from.

Q. He phoned him?

A. Yes.

Q. Tell us what Mr. Rayzor said to Mr. Mandell.

A. He said, "Arthur, why don't you release those men and let them go to work?" He said, "The company right now isn't doing much," and he said, "as I understand, these men have signed under articles, and so forth, it is creating quite a disturbance."

He said, "I don't see why you don't let those men go to work."

He said, "I understand the election which has been held is pending before the Labor Relations Board, and whenever a decision is made, I suppose the company will abide by it, if the decision is rendered in favor of the men."

TRIAL EXAMINER SEAGLE: Are you sure he said that?

THE WITNESS: He said words of that kind.

TRIAL EXAMINER SEAGLE: As a matter of fact, hadn't the Board made its decision by that time?

MR. CASTIELLO: Of course it had.

TRIAL EXAMINER SEAGLE: Hadn't it made it, as a matter of fact, six months before?

THE WITNESS: Just to give you an idea how much we knew about it, we told Mr. Rayzor that was a rumor, and probably that's all Mr. Rayzor knew. He handled the case in Texas. Our case came up in Philadelphia, you see, and that is where it probably was handled.

By MR. CASTIELLO:

Q. Wouldn't your attorney in Houston know about a matter of this importance?

A. I don't think he knew a thing about it until this thing came up, until we told him what we heard.

Q. After Mr. Rayzor was through speaking to Mr. Mandell, what did he say Mr. Mandell said to him?

A. He says, "There is nothing to do. The men will go to work."

Q. Is that all he said?

A. That's all he said. That is what he told us at the conclusion of the phone call.

Q. You mean to have us believe that Mr. Mandell merely told Mr. Rayzor that the men would go back to work without even having gotten to any agreement?

A. No agreement whatsoever, excepting, as I said a while ago when Mr. Childs asked me the question, he told him he would talk to him in a day or two, they would discuss the matter later; but there was no specific agreement that I know of.

Q. What were they going to discuss later?

A. I don't know anything about that.

Q. Didn't you ask him?

A. I didn't, no. I didn't ask him.

Q. But there was some sort of an agreement, wasn't there?

A. There wasn't any agreement, for what I understand Mr. Rayzor said, excepting that they will talk to him, and try to make an agreement, or they will discuss the matter.

Q. Did they agree to meet later, is that what you mean?

A. They agreed to meet later.

Q. What were they *going to discuss* when they met later?

A. I don't know anything about that.

Q. Did this agrement to meet later terminate this strike, as we call it?

A. That terminated that particular incident, that is.

Q. You mean the incident of the men not working?

A. The mere fact that Mr. Rayzor called Mr. Mandell, and told him, as I explained, that the company wasn't doing so much right now, and so forth, and then he concluded, he said, "That's all there is to do. The men will go to work."

Q. You say he said "the company is not doing so much." Will you explain that?

A. The business, the freight at that time was rather slack, or at least, that is the words Mr. Rayzor used.

Q. That wasn't the truth, was it?

A. We could have done better.

Q. But you were running regular schedules?

A. That's right, a regular schedule, but you can run a light ship, or a full ship, it means whether you are doing good or doing bad.

Q. Did you inquire of him what that had to do with the question of recognizing this union, that the ships were not running regularly, or that there wasn't as much cargo as there might have been?

A. With me, my sole duty is to go down to the ship and get those boys to work, and sail. I didn't care anything about any agreement he may make, or what his intention was.

Q. When you left that office, you went down to the ship, did you not?

A. Yes, sir. It was about a quarter to seven.

Q. And you say you saw these two men who were from the union, at least, they told you they were?

A. They told me so.

Q. During the day, Captain, were you not able to see, from the ship, certain men on the dock?

A. Most of my day was spent, after we have concluded our conference with these men, off the ship. I don't even bother to go much around the ship.

Q. Perhaps you misunderstand me.

A. They could be seen. In fact, they could be heard.

Q. Who could be heard?

A. Anybody from the dock could be heard aboard ship.

Q. These two men you say you saw from the union, those two men had been on the dock that day, had they not?

A. They might have been, but I didn't recognize their faces, I didn't pay that much attention to them.

Q. Certainly you were paying attention to these men on the dock during the day, weren't you?

A. Our dock down there is at the bottom of the street, and it is a public place, there come around there sightseers, and plenty of them, and I was interested in getting these men to go to work, or rather, to restore some obedience, and I didn't care who they communicated with, or anything else. After all, I didn't know anything about that. I probably seen those men out there, but I couldn't swear that I have.

Q. What conversation did you have with these men?

A. With our men?

Q. No, with these two men who said they were from the union.

A. As they were approaching the ship, as I stated a while ago, I probably asked them where are they going.

Q. Where was Mr. Shreider at that time?

A. He was locking his car up, he was some little distance away.

Q. And he came over and joined you?

A. No. He came over later on, and I asked him his opinion in the matter, and then we got together, and he said, "No, Captain, we can't do that, our ruling is. There are several unions," he said, "if we allow one aboard, we

will have to allow more, and we can't make any exception in this case."

My suggestion was that we had to get together somehow, in order to pass these orders on to them, and the testimony shows how these men came out and spoke to them.

Q. The men did go to work, and the ship sailed?

A. That's right.

Q. And, Captain, it seems incredible to me that you don't know under what terms the men sailed.

A. Yes, sir; I always know the terms. Of course I do.

Q. What were the terms?

A. The terms was on the face of the articles, to appear in a sober condition at 8:00 o'clock in the morning on sailing day, and to continue to do their duties, their respective duties.

Q. I am afraid you misunderstood me. I say, it is hard for me to believe that you don't know what agreement was arrived at, that made these men go back to work.

A. I didn't know one thing about it.

Q. Didn't you ever inquire what the agreement was?

A. As I have said so many times, I was interested in sailing the boat, and I didn't care how, as long as we sailed the boat, I didn't know anything at all about any agreement that was made.

Q. This had been a serious difficulty, had it not, these men not obeying your orders?

A. I considered it quite a case, quite a gross disobedience, I would call it.

Q. Then they suddenly, so to speak, went back to work, and you don't know why they went back, do you?

A. They got their orders from the union delegates, or from somebody out there on the dock representing the union, and that is the orders they obeyed.

Q. How do you know they got orders from the union delegates?

A. I never talked to them, but, at the conclusion of their conversation with those men, they proceeded back to work, so I assume they got their orders.

Q. You assume you got orders from union delegates?

A. I didn't give it to them.

Q. But you don't know whether they got orders or not?

A. But they certainly have made up some decision at the time, at the conclusion of their talk with those two men.

Q. You want the record to show that you don't know what that agreement was?

A. I don't know anything about it, absolutely nothing.

Q. There came a time, Captain, when the five men named in the complaint were discharged?

A. Yes.

Q. Is that correct?

A. That's right.

Q. They were discharged, weren't they?

A. That's right.

Q. There is no question about that?

A. No question about that.

Q. If these five men had not disobeyed your orders on July 18th, would they have been discharged?

A. That question remains with the first mate and the chief engineer. I got three departments on the ship there, one headed by the chief engineer, and one by the first mate, and one by the steward, and if these men recommend to me that they want to discharge any of their men, in nearly all cases I agree with them. They have got to work those men, and it would be just like putting a cat and dog together to keep a man around they don't want.

Q. You have final authority, so far as hiring or discharging is concerned?

A. I have final authority.

Q. You can't tell us now, if these men had not refused to obey orders on July 18th, whether they would be fired?

A. I can't say for sure that they would or not, because, as I said before, that is handled by subordinates, by the first mate and the chief engineer, and it is pretty hard for me to read their minds, whether or not they would have made the suggestion to me if this thing hadn't come up.

Q. Certainly you know they wouldn't have made these suggestions to you if this hadn't come up?

A. I don't know. For instance, these things accumulate gradually. You have somebody working with you, and he gradually gets on your nerves, and don't do the things you want, probably this thing here had some bearing on it. It was disobedience.

Q. You say it had some bearing. Then you don't consider it serious, at all, do you?

A. I consider it was an accumulation, with the other items that was against these men before, particularly in the deck department, which, in one case, the man drank too much; in the other case, he didn't do so much, and disobedience, and the first thing the mate comes to me, "Captain, I am thinking of letting that fellow go." It is very difficult for me to tell him to keep him, because he has to work him.

I am holding the first mate responsible to keep the ship up.

Q. When the first mate comes up and says to you, "I want to let this man go," you inquire to see that there is sufficient reason to let him go?

A. Yes, of course I would inquire.

Q. I mean, the personal whim of the first mate would not be sufficient?

A. I would inquire, in all cases; but if the fellow says, "I don't want him here," in that case it becomes a question right there between the man and the first mate, and who am I going to fire? Do you see what I mean? Those men handle their men; of course, realizing, technically, I have final authority, as far as that is concerned, to fire the first mate.

Q. Let us understand one another.

Your testimony on these discharges sums up to this: That even in the absence of this refusal to obey on July 18th these five men may have been discharged?

A. They may have been, that's right.

Q. But it certainly had something to do with their discharge?

A. It may have. It is not certain. It may have.

TRIAL EXAMINER SEAGLE: Didn't these officers who talked to you mention their conduct during the strike as one of the reasons for firing them?

THE WITNESS: If your Honor please, we had thirteen men who struck that day.

TRIAL EXAMINER SEAGLE: I am referring to these five men.

THE WITNESS: I understand, but I am trying to get the point, that we get these reasons as they come up, and accumulate.

TRIAL EXAMINER SEAGLE: I am asking you a simple question. Did they mention that fact, or didn't they?

THE WITNESS: They have discussed the question.

TRIAL EXAMINER SEAGLE: With you?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: And gave that as one of the reasons for firing them?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Not in the case of a single one of the five?

THE WITNESS: No, sir. They have discussed principally their past conduct.

TRIAL EXAMINER SEAGLE: Did you take into consideration, in consenting to let them go——

THE WITNESS: I took it into consideration somewhat.

TRIAL EXAMINER SEAGLE (continuing): —their conduct during the strike?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: And their participation in the strike?

THE WITNESS: Their participation in the strike——

TRIAL EXAMINER SEAGLE: And that was one of the reasons for their being fired?

THE WITNESS (continuing): —I Considered disobedience.

TRIAL EXAMINER SEAGLE: I didn't ask you what you considered disobedience. I asked you whether that was one of the reasons for firing them.

THE WITNESS: That's right.

By MR. CASTIELLO:

Q. In answer to certain questions of Mr. Childs relating to Respondent's Exhibit 3, for identification, you stated that you reported to the inspector that you let out five men, and you named them in the letter.

A. That's right, we made a report that they participated.

Q. But you say you let out the five men because of their unsatisfactory behavior on July 18th?

A. That is one of the causes, as I said before, that was considered some.

Q. When you wrote to the local inspector, you didn't tell him about the other misbehavior or misconduct of these men, apart from the strike of July 18th, did you?

A. No, sir.

Q. You concur with Mr. Helland's testimony that drinking is not uncommon among seamen, do you not?

A. They drink occasionally. Sometimes you get a crew that drinks more, other times you have one that doesn't drink at all.

Q. And as far as spilling paint is concerned, you are not going to try to tell us that that is unusual?

A. Well, it is not a common occurrence. It does happen, but it is not a common occurrence.

Q. How many times, in your experience, has it happened?

A. In twenty-eight years at sea, you are sure asking me some question. I have seen it spilled.

Q. Would you say often, or not?

A. I would say seldom. I would say, maybe if a man would spill paint once a year, I would consider that about as much as you would expect a man would do.

Q. Let's you and I be realistic about this. When men are painting on a ship, they are not painting like artists, are they?

A. No.

Q. They are just taking a big paint brush, and slapping that paint all over the deck?

A. Sometimes they are a little more careful, sometimes painting the name of the ship, or sometimes on the smokestack, painting the company's sign up there.

Q. Apart from that, the painting we are speaking of on the ship.

A. Well, that is on the ship. You can do tedious painting, and again, you can go over the side, and just slap the paint on quickly.

Q. That is how the men do, don't they, they slap it on?

A. If they are painting the ship's side. If they paint the smokestack, they have black paint and white paint, and a brush up there to handle the situation. It is a more careful job.

Q. In your experience, have you ever discharged anyone for having spilled paint?

A. Never have.

Q. In your experience, have you ever discharged anyone for having been drunk?

A. Quite a few.

Q. Would you say that you fired Mr. Warren because he was drunk?

A. If he lost a day's work on account of his drinking, he would have been discharged before that. I didn't know about that item until later on, when Mr. Helland said he lost a day's work, and came in at 9:00 o'clock the next morning, according to his testimony.

And, in discussing this matter with me after we left Houston on that ship, if Mr. Helland had told me that before, I would have discharged him before. If a man loses a whole day's work, and gets drunk, shortly after he just got himself a job, and he isn't careful enough to hold it, I most likely would have made the suggestion to let him go.

Q. Can you tell us of any instance where you fired a man for having been drunk?

MR. MCKAIG: Just a minute. I object.

A. Well, there are so many.

MR. MCKAIG: I don't see the relevancy of other instances.

TRIAL EXAMINER SEAGLE: Will you confine the question to the "Fort Worth"?

MR. CASTIELLO: All right.

By MR. CASTIELLO:

Q. Was any man ever fired from the "Fort Worth" for having been drunk?

A. Yes, sir.

Q. Who?

A. I would have to look into the records on that, because there have been quite a few.

Q. Were they ever given another chance?

A. If the cases are reasonable. If a man goes out on a party, or something like that, and gets drunk, and he doesn't show up the next day, we might reason he should have another chance. On the other hand, if he is given a chance, and then he repeats it, or he walks away from his job, and goes out there and drinks, he may not get a second

chance. We would probably give him one chance, that's about all.

Q. Did the mate, Mr. Helland, tell you why he had not reported the fact that Mr. Warren had missed a day?

A. It just slipped his mind, he told me. I talked to him about that.

Q. Do you mean to tell me that a matter of the importance you want to make it would slip his mind?

A. Well, it might happen. In Philadelphia, I am home most of the time, and by the time the ship sails, maybe the thing kind of wore out of his mind, and maybe sometimes a man looks good to him, you know, and he don't want to tell me about it. Maybe it slipped his mind on purpose sometimes. I don't know that.

Q. You spoke of Mr. Pfuhl, and you said that three mates, two mates in addition to Mr. Helland, had reported that his work was not satisfactory.

A. That he wasn't doing quite enough.

Q. That he wasn't doing quite enough?

A. That he was slow, rather.

Q. Can you tell us whether Mr. O'Donnell was the first mate who told you that?

A. That's right.

Q. When did he tell you this?

A. During that trip. If I recollect correctly, Pfuhl made one trip with Mr. O'Donnell, and he noticed that about him right away, on that very trip.

Q. When you say, "during that trip," do you mean the trip back from Houston on July 18th?

A. No, he made one round trip. Pfuhl has been with us for a year. Mr. O'Donnell has been off from us for some time now.

Q. When did Mr. O'Donnell report to you that Mr. Pfuhl was not doing enough work?

A. On that trip, when them two worked together on that boat.

Q. What trip?

A. In October, 1937.

Q. October, 1937?

A. Yes. Either October, or November.

Q. When did Mr. Kiernan report to you?

A. The following trip. As I recall it, Mr. O'Donnell made one trip with Pfuhl, then Mr. Kiernan took his place, pending moving Mr. Helland with us.

Q. When Mr. Kiernan reported to you, would you say it was sometime in November, 1937?

A. Right away, when he took the ship, he seemed to also notice it.

Q. Would you say it was November, 1937?

A. I would, yes, the latter part of November.

Q. When did Mr. Helland report to you?

A. As soon as he came aboard.

Q. When did Mr. Helland come aboard?

A. He has been aboard about six or seven months, now, just a month or so before this strike.

Q. Was that the first time that Mr. Helland came aboard?

A. Yes. He was a new man on board.

Q. He came on board, then, June 18th, approximately?

A. Yes.

Q. And Mr. Kiernan had been first mate from sometime in November, 1937 until June, 1938?

A. Something like that.

Q. Did you consider his not doing enough work of any seriousness?

A. Well, we have a bunch of men up there, working.

Q. Please answer the question.

A. Yes, sir.

Q. You did?

A. Yes, I considered it serious.

Q. Isn't it a fact Mr. Pfuhl was re-signed several times after these reports came to you?

A. That is true.

Q. Won't you explain to us why you did not discharge Mr. Pfuhl after you got these continuous reports?

A. For the simple reason one first mate comes and tells me a thing, I know he is going off ship, then I like to give the man a chance with another mate.

Then Mr. Kiernan takes over the job, and I know he was a temporary mate, and I told him, when he first told me, I said, "You can fire him if you want to, but in view of the fact Mr. Helland is coming here a little later, if you want to linger that long, and let him try him, that is up to you."

And Mr. Kiernan said, "All right, we will do that."

Then, when Mr. Helland came along, then he found fault, resulting in his final dismissal.

Q. Will you say as to Mr. Pfuhl particularly that his engaging in the sit-down strike and refusing to obey your orders had nothing to do with his being discharged?

A. I wouldn't say that. I think he had disobeyed the orders on that day just the same as any other, and that probably led to his final dismissal, after these men had been personally sailing with that fellow for so long.

Q. But you never took any action on this until July 18th?

A. I don't take action, usually, it is the first mate that takes action, and he tells me about it.

I can overrule him if I want to, but usually I don't.

Q. You didn't get any reports that mess boy Smith had refused to serve food, did you?

A. No, I didn't have any reports excepting on that one day.

Q. He hadn't refused to serve food that day, had he?

A. That's right.

Q. That is correct?

A. Yes, that is correct.

Q. Did you get a report that he interfered in any way with the steward's activities?

A. Not that I know of.

Q. Did you get any reports, or did you observe that the strikers, on July 18th, interfered in any way with the safety of the ship?

A. They didn't interfere in any way, once they got back to their station, to the poop deck.

Q. In other words, I want this to be perfectly clear, now: Here we have the "City of Fort Worth," the physical ship. The poop deck is aft, isn't it?

A. Back aft.

Q. And that is the highest part of the ship?

A. No, it is not the highest.

Q. Isn't it?

A. No. It is raised above the stern, on what they call a three-island ship, the poop is a trifle higher than the stern, but amidships is much higher.

Q. But the poop deck is one of the high parts of the ship?

A. It is above the main deck, yes, sir.

Q. What is the poop deck ordinarily used for?

A. There are lines up there, and they have a water closet, a place back there in the middle of it, you know; usually the men sit around there in the summer time.

Q. It is sort of a place where men might gather and talk, when they are off their watches?

A. That's right.

Q. They probably smoke there, and chat about things other than their duties on board the ship?

A. Yes, that's right.

Q. Let us say it is a gathering place for the men?

A. That's right, if it is warm enough for them to get up there.

Q. So that the men, when they sat down on the poop deck, did not take possession, so to speak, of any vital part of the ship, that would interfere with the duties of any of the officers?

A. No, they didn't.

Q. That is correct?

A. That is correct.

Q. They didn't?

A. No.

Q. No reports were made to you that these men threatened the officers, were there?

A. None other than what the testimony shows. The testimony shows that Mr. Norton and Mr. Robinson told me.

Q. Did they tell you?

A. They told me.

Q. Outside of that, was there anything else?

A. Nothing else.

Q. The report did not come to you that Tracey had struck Mr. Robinson?

MR. CHILDS: I object to that. There is no testimony in the record to that effect.

TRIAL EXAMINER SEAGLE: The objection is overruled.

A. No, there is no record on that, that I know of.

By MR. CASTIELLO:

Q. You never heard it?

A. I never heard it.

Q. No reports were given to you—you heard the testimony here, no reports were given to you that there were any threats on the part of the strikers to harm the ship itself?

A. No, sir.

Q. There were no threats of sabotage, were there?

A. No, sir.

Q. We might say that the strikers merely took their positions on the poop deck, might we not, and just behaved politely, didn't they?

A. They behaved politely, outside of disobeying the orders.

Q. I mean, other than that.

A. That's right. I am the captain of the ship, I know that.

Q. They behaved properly?

A. Yes.

Q. Except that they disobeyed orders?

A. Yes.

Q. On the way back to Philadelphia from Houston, the crew conducted itself properly, did it not?

A. Yes.

Q. In a competent manner?

A. Yes.

Q. You have no complaint as to the manner in which they conducted themselves?

A. No complaint.

Q. They didn't endanger the ship in any way?

A. No.

Q. The ship arrived at Philadelphia about July 25th, did it not?

A. That's right.

Q. Did you report any one of the incidents occurring on July 18th?

A. I reported to Mr. Sherry.

Q. Where did you see Mr. Sherry?

A. I saw him on the dock, in his office.

Q. What did you say to him?

A. I told him the incident as it happened down there, I told him the men refused to work.

Q. Just as you related it for the record?

A. Just as I related it here, only briefly. You see, we came in in the afternoon, the banks closed at 3:00 o'clock, I had to go to the office and get my payroll. I said, "We can discuss the matter later if you want to, but I would like to get my payroll through so we can pay off."

So we discussed the matter very briefly, Mr. Sherry and I.

Q. What did you say to Mr. Sherry?

A. I told him we would like to pay off right away, and he said a whole lot more about where I been down there, about where I been when this happened. In fact, he consumed most of the time trying to tell me that.

I told him he can bawl me out later on, if he wants to, I told him I would like to get this payroll through.

Q. Apart from the payroll, what did Mr. Sherry have to say when you reported the conduct of these men?

A. He asked me what I thought about it, how things happened, and so forth, and, as I said, I didn't discuss it but very briefly.

I told him, nevertheless, that I spoke to the chief, and that he decided to let two of his men go, I told him about the men he intended to dismiss.

Q. What did Mr. Sherry say as to that?

A. Mr. Sherry said, "Well, I guess it is all right."

Q. Is that all he said?

A. That's about all.

Q. "I guess it is all right"?

A. That's about all he says, when you tell him you are going to let somebody go, he agrees, in most cases.

Q. How long did the conversation with Mr. Sherry last?

A. I don't think it was over five minutes.

Q. Did you ever speak to him at any other time after that concerning the activities of July 18th?

A. We went into detail about it later.

Q. When?

A. I guess it was the next day, at the time I got through paying off that day it was pretty late in the evening, I usually go home as early as I can.

Next day, of course, we discussed it.

Q. What did Mr. Sherry have to say?

A. To tell you the truth, he said plenty about me not being on the ship that day.

Q. Apart from your not being on the ship?

A. He didn't say nothing much about it. There wasn't much he could say.

Q. What's that?

A. There wasn't much he could say, he didn't say much. I can't recall anything worth mentioning.

Q. Can't you recall what he said?

A. He asked me what the general procedure on that day.

Q. And you reported to him just what Mr. Warren said about union recognition, didn't you?

A. I practically told Mr. Sherry what I have told in this testimony.

TRIAL EXAMINER SEAGLE: Tell us again. Would you mind being obliging?

THE WITNESS: Yes, sir. I told him that we came aboard at 10:30 in the morning, and that I got hold of Mr. Shreider, the first mate, and Mr. Norton; that we went back and talked to these men; that I asked them to go to work, that I asked them first what the trouble was, they told me what the trouble was, they said they were not treated fair by the company, in view of this election that they have won, the company refused to recognize them, and that I proceeded to tell them to go to work, and that Warren, who was the spokesman for the group, said they wouldn't go, and then I proceeded and asked each individual again.

By MR. CASTIELLO:

Q. Did Mr. Sherry ask you, "Who do you think was responsible for this trouble down there?"

A. He asked me who I thought was responsible.

Q. And what did you say?

A. I told him it was pretty hard to say. I said the thing was decided sort of between the bunch of them, and I just don't know. I told him this fellow, Joseph Warren, was the spokesman for the group, whether he was the leader or not I can't say, because he might have been elected to head the gang, and yet not be the leader.

Q. Who else's name did you mention, besides Joseph Warren?

A. Nobody. I just referred to him because he was the spokesman.

Q. Didn't you mention anybody else?

A. No, sir.

Q. Didn't you mention you wanted to fire Pfuhl?

A. I mentioned I wanted to fire him.

Q. Why did you tell him he should be fired?

A. Because of the accumulated items that had come up previous to that, and in view of the fact, also, after being lenient with him, he had indulged in this disobedience down there.

Q. You mentioned that, didn't you?

A. I mentioned that.

Q. You considered that important?

A. I considered it as one of the items, not important.

Q. Would you consider it serious if a man spilled paint?

A. Yes.

Q. Isn't it more serious for a man to refuse to obey orders than to spill paint?

A. Oh, yes, it is more serious.

Q. That was the reason why these men were fired, because they went on strike?

A. It wasn't the sole reason, because, if that was the reason, there is no reason why they wouldn't have fired the whole thirteen men; so we had to consider other items with that.

TRIAL EXAMINER SEAGLE: Just what other items did you consider? That is what I want to know, too.

THE WITNESS: We had considered, as in the testimony here stated.

TRIAL EXAMINER SEAGLE: What do you have against Fergeson?

THE WITNESS: Fergeson, the chief engineer said he thought he started the thing. He was on watch at the time.

TRIAL EXAMINER SEAGLE: He thought he started the strike?

THE WITNESS: That he wasn't——

TRIAL EXAMINER SEAGLE: No, isn't that what you just stated?

THE WITNESS: He didn't start the strike. He was on duty at the time.

TRIAL EXAMINER SEAGLE: You had nothing against Fergeson's work, did you?

THE WITNESS: I don't know anything about it.

TRIAL EXAMINER SEAGLE: I am asking you, did you ever have any report against his work?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Did you have any report æagainst Tracey's work?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: You picked them out, didn't you?

THE WITNESS: I didn't pick them out.

TRIAL EXAMINER SEAGLE: They were picked out by your officers?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: You approved their discharge?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: You had no curiosity to find out why they were picked out?

THE WITNESS: They told me.

TRIAL EXAMINER SEAGLE: They had to give you some reason, didn't they?

THE WITNESS: They gave me a reason.

TRIAL EXAMINER SEAGLE: What was that?

THE WITNESS: The reason was that Fergeson was supposed to go on watch at the time.

TRIAL EXAMINER SEAGLE: Didn't you say that Fergeson started the whole thing?

THE WITNESS: I didn't mean it that way.

TRIAL EXAMINER SEAGLE: You didn't mean it that way, but you just said it, is that right?

THE WITNESS: I tried to quote what the chief engineer told me.

TRIAL EXAMINER SEAGLE: What the chief engineer told you about Tracey?

THE WITNESS: He said he had threatened the second assistant, that is in his testimony.

By MR. CASTIELLO:

Q. Your log contains an entry that the men had gone on strike?

A. I didn't get that.

Q. Your log book?

A. That's right.

Q. Does it contain the names of the men who are to be discharged?

A. Yes, it does.

Q. And the log book goes on to state that they are to be discharged because of the action they took on the 18th?

A. I don't know whether that particular item is mentioned in the log book.

TRIAL EXAMINER SEAGLE: Would you look at the log book and see what it does state?

THE WITNESS: Yes, I would like to.

We did not log any particular men, as to why they were discharged.

TRIAL EXAMINER SEAGLE: The question is, does the log book contain an entry to the effect that five members of the crew are to be discharged?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: In connection with their activities, or lack of activities, on July 18th?

THE WITNESS: No, sir, it doesn't contain it.

TRIAL EXAMINER SEAGLE: You made no such entry?

THE WITNESS: I made no such entry, no.

By MR. CASTIELLO:

Q. It merely states that on July 18th, thirteen men had gone on strike?

A. It didn't say they had gone on strike.

Q. Thirteen men had refused to obey orders?

A. That's right.

Q. It contains nothing at all concerning this conduct apart from July 18th of these five men who were discharged?

A. No, we didn't log that item at all, we just left it out.

Q. As a matter of fact, your log does not show, does it, on the dates that Warren and Pfuhl were supposed to have been drunk, and spilled paint?

A. As I said in my testimony, I never logged a man in my life for disobedience. And this thing here, being such a gross case, so many men involved, we had noted it in the log book, and if I wanted to log somebody, that would be an item taken up on each occasion as it occurred; but I have never done that, I have never been in the habit of doing it.

Q. You can't lift a man's certificate before he gets a hearing, can you?

A. Oh, no.

Q. He is entitled to a hearing before the U. S. Shipping Commissioner?

A. No; before the Steamboat Inspector.

Q. Before the Steamboat Inspector?

A. We can file charges, and if the ruling is against the man, it depends on the inspector.

Q. You say the only reason you did not file charges is because of a personal feeling?

A. Always, I never injure a man if I can have personal control of it.

Q. But you have fired men?

A. I have fired men that we can't handle. You know what I mean.

Q. I think I know what you mean, yes.

A. Well, generally, either one thing or another that is beyond my control.

MR. CASTIELLO: That's all.

TRIAL EXAMINER SEAGLE: Can you discharge a man without consulting Mr. Sherry or any other official of the company, when the ship comes into port?

THE WITNESS: That would depend on who the men are. I wouldn't discharge one of the engineers, for instance.

TRIAL EXAMINER SEAGLE: I am referring to unlicensed members of the crew.

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: You may, when the ship arrives in port, tell them they are through?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: You may tell them that without consulting Mr. Sherry, is that correct?

THE WITNESS: Yes, sir, that is correct.

TRIAL EXAMINER SEAGLE: And you did that in this case?

THE WITNESS: I didn't. But Mr. Helland spoke, in my behalf, and I agreed.

TRIAL EXAMINER SEAGLE: But you told these men that they were through before you consulted Mr. Sherry.

THE WITNESS: That's right. I didn't tell them that, nevertheless, I passed it on to Mr. Helland.

TRIAL EXAMINER SEAGLE: But somebody on your behalf told them?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: Will you tell me why you took that action without consulting Mr. Sherry?

THE WITNESS: I didn't see no reason. I handle our men.

TRIAL EXAMINER SEAGLE: When you left Houston, Captain, you knew that an agreement was under way, or might be made, with reference to the strike that had occurred on July 18th?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You knew that?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Even if you didn't know what the agreement was, you knew that one had been made, or was going to be made?

THE WITNESS: Probably will be attempted to be made, at least.

TRIAL EXAMINER SEAGLE: Probably would be attempted to be made?

THE WITNESS: That's right.

TRIAL EXAMINER SEAGLE: Being a reasonable human being, didn't it occur to you that that agreement might have something to do with what was done to the strikers?

THE WITNESS: Not to these men that have been discharged.

TRIAL EXAMINER SEAGLE: Do you mean to tell me that it never occurred to you that that agreement might affect the status of these men?

THE WITNESS: If I am overruled, I would keep them, but I have decided on letting the men go.

TRIAL EXAMINER SEAGLE: But the possibility an agreement might be arrived at to the effect that there was to be no discrimination against these men, or that there was to be no discharge of these men, did not enter into the decision you made?

THE WITNESS: None at all.

TRIAL EXAMINER SEAGLE: Do you mean to tell me that?

THE WITNESS: None at all. In fact, I paid very little attention as to whether there was an agreement being made or not.

TRIAL EXAMINER SEAGLE: You paid enough attention to it to know that one was being considered?

THE WITNESS: That is true, it was being considered.

TRIAL EXAMINER SEAGLE: Didn't you have normal curiosity to find out what it was about?

THE WITNESS: I have curiosity, all right.

TRIAL EXAMINER SEAGLE: Do you mean to tell me that during your whole period in Houston, and all the way up to Philadelphia, you never spoke to a soul about what had been agreed on?

THE WITNESS: None at all, nobody.

TRIAL EXAMINER SEAGLE: But you did know an agreement was under consideration?

THE WITNESS: Only what I heard Mr. Rayzor tell Mr. Mandell over the phone.

TRIAL EXAMINER SEAGLE: Did the ship stop at any intermediate ports between Houston and Philadelphia?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Did you receive any communication at sea from the officers of the company?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: By wireless?

THE WITNESS. No, sir.

TRIAL EXAMINER SEAGLE: Will you tell me why you never made the entry in the log book that these five men were to be discharged?

THE WITNESS: I filled the log book as a matter of record. My long experience is I have never logged a man yet. I wasn't going to change it in this particular case. In other words, if I am going to fill out the log properly, and bring it before the shipping commissioner, these men will be docked two days' pay. I didn't want to do that in this case.

TRIAL EXAMINER SEAGLE: You didn't think the discharge was worse?

THE WITNESS: I will fire a man. I will not log him.

TRIAL EXAMINER SEAGLE: By being discharged, they lost a whole lot more pay than by being logged a couple of days?

THE WITNESS: If I can't get along with a man, I will discharge him.

TRIAL EXAMINER SEAGLE: You, personally, had nothing against these men, did you?

THE WITNESS: I had to work with my men on the ship, with my other officers.

TRIAL EXAMINER SEAGLE: You say you always leave that to your officers?

THE WITNESS: To my officers.

TRIAL EXAMINER SEAGLE: You act on their recommendation?

THE WITNESS: I act on their recommendation.

TRIAL EXAMINER SEAGLE: Did you ever give orders while the ship was in Houston, on July 18th, that the men leave the ship?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: At any time during that day?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: As a matter of fact, didn't the crew ask your permission at 7 p. m., when they left the ship to go on the dock?

THE WITNESS: Yes, it was agreed on between the men I spoke to on the dock.

TRIAL EXAMINER SEAGLE: That's all.

MR. CASTIELLO: One question, please.

By MR. CASTIELLO:

Q. Do you know whether anything further was done by the company in respect to this getting together on an agreement?

A. I don't know anything about it.

Q. Did you ever inquire to see whether anything further was done?

A. No, sir.

MR. CASTIELLO: All right. That's all.

MR. MCKAIG: Are you going to adjourn for lunch now?

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion outside the record.)

MR. CASTIELLO: Mr. Childs, you stated at our last meeting, on December 13th, that you would give, for the record, the value of the maintenance, or keep?

MR. CHILDS: On behalf of the company, I stipulate that the value of the maintenance or keep, which includes food and lodging, is $2.35 a day.

TRIAL EXAMINER SEAGLE: $2.35?

MR. CHILDS: $2.35 a day.

(Witness excused.)

TRIAL EXAMINER SEAGLE: The hearing is adjourned until 2 p. m.

(Whereupon, at 12:50 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

AFTER RECESS.

(Whereupon, the hearing was resumed, pursuant to recess, at 2 o'clock p. m.)

TRIAL EXAMINER SEAGLE: The hearing will come to order.

MR. CHILDS: Mr. Sherry, will you take the stand?

CHARLES F. SHERRY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CHILDS:

Q. Mr. Sherry, what is your full name?

A. Charles F. Sherry.

Q. Where do you reside, Mr. Sherry?

A. Business address, Southern Steamship Company, Pier 46, South Wharves.

Q. What is your position with the Southern Steamship Company?

A. Marine superintendent.

Q. How long have you held that position?

A. Since 1921.

Q. Do you recall whether, when the steamship "City of Fort Worth" arrived at Philadelphia, on July 25, 1938, you had any conversation with Captain Rudan?

A. Yes. Captain Rudan reported shortly after his arrival, to me, about difficulties at Houston, about the men sitting down, and that he had reason to leave some of them go.

Q. Will you just state in as much detail as you can remember what he said about each one of these men whom he said he was going to let go?

A. Well, I think he was quoting the Chief when he spoke about Tracey and Fergeson.

There was a feeling about Fergeson that he shut the steam off, and the Chief was annoyed and peeved about that.

Q. Did he say anything about Tracey?

A. About Tracey, Tracey was down in the engine room, or somewhere close by, when Robinson was going down and going to turn the steam on. I believe Robinson had questioned Fergeson about shutting the steam off, and he was going down to turn it on, when Tracey challenged Robinson, that he had better not turn the steam on.

Q. Did Captain Rudan, in that conversation, say anything to you about Pfuhl?

A. About Pfuhl?

Q. Yes.

A. Yes, he told me that Pfuhl seemed to be a disappointment to them all around, and that they were going to leave him go, they had annoyance with him about his work, he was a careless workman, and his conduct, plus his carelessness, was against him for keeping him any longer em-

ployed on the boat; as I understood it from them, not once, but at different times, was he careless.

Q. Did Captain Rudan in that conversation say anything about Warren?

A. Warren seemed to be a chap who had done a lot of drinking, and who had caused a lot of annoyance to them, and was not thoroughly responsible in his job, and they had figured they would leave him go.

Q. What was said, if anything, about Edward Smith?

A. Smith, as I understood it, took sort of a superior feeling to himself, and wanted to be a little superior to the steward and those that were his boss, or his superiors.

TRIAL EXAMINER SEAGLE: Are you still telling us what the captain reported to you?

THE WITNESS: Yes.

That the boy, seemingly, was beyond himself.

MR. CASTIELLO: May I be excused to answer a telephone call?

TRIAL EXAMINER SEAGLE: The hearing will recess for a few minutes.

(A short recess was thereupon taken.)

By MR. CHILDS:

Q. Did Captain Rudan, in that conversation, say anything to you about Smith's performance of his duties?

A. Yes. He briefly covered that Smith was a little careless about his work. I must confess I did not have a great deal of a talk with Captain Rudan on arrival day. In fact, he was hurrying up, to get his payroll.

Q. Did Captain Rudan have charge of the ship?

A. Complete charge.

Q. What did he say about letting the men go?

A. He gave his various reasons.

Q. Outside of that, what was the conclusion?

A. About leaving his men go?

Q. Yes.

A. He had decided, at the recommendation of the Chief, to leave two men go from the engine room.

Q. That was Warren and Pfuhl?

A. Yes.

Q. No, I beg your pardon. That was Tracey and Fergeson?

A. Tracey and Fergeson, right.

And the mate had discussed with him about the weakness of Warren and Pfuhl, they decided to leave them go.

Q. And how about Smith?

A. Smith was taken up by the steward, and he decided he would leave Smith go.

Q. Does the steward have a license?

A. No, he is of the unlicensed personnel.

Q. Does the steward have authority himself to employ and discharge people?

A. That all comes under the Captain discharging. The Captain does listen to the advice of the different heads of the departments, but he is the sole man who makes the decision.

Q. Is there any difference between an officer like the chief engineer, and the first mate, and the steward?

A. Quite a difference.

Q. What is the difference?

A. When you are dealing with the engineer, he has got quite a unit down there, he is a recognized officer of the boat, and he has complete charge of his boilers and his power equipment, and everything, and is quite an authority on the boat.

Q. How about the first mate?

A. The first mate has all the chief details about the duties on the deck end of it, and quite some authority on the boat. But they all do answer to the Captain, and before drastic action is taken, the Captain goes along with or listens to the reports of the men.

Q. When the Captain told you he was going to let these men go, did you make any comment?

A. I went along with him, and possibly I may have asked why; I more than likely did, and he mentioned the different reasons why he was leaving this one and that one go.

MR. CHILDS: Cross-examine.

CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. It was reported to you, was it not, that the thirteen strikers had all disobeyed the orders of the various officers on board the ship?

A. Yes.

Q. Can you tell us why the five men named in the complaint were particularly chosen for discharge?

A. Well, just what was already said, that Fergeson shut the steam off. The Chief had particularly asked him about the shutting of the steam off, and found fault with him doing it, and wanted him to stand by until he supposedly went aft somewhere to find out what it was all about, and found fault with him for shutting the steam off.

In other words, he was disobedient to orders, and did not follow along with the Chief's thoughts.

Q. Weren't the others of the thirteen also disobedient, as to following orders?

A. As I gather from them, they were.

Q. From the reports, of course?

A. Yes. Not to the extent of these two men that the Chief had singled out.

Q. In other words, Tracey and Fergeson initiated this difficulty you had on July 18th, was that the report?

A. They seemed to be the outstanding ones of this little difficulty in and around the engine room and fire room, Fergeson shutting the steam off. When Robinson noticed the steam shut off, as I understood it from the Chief, and was going to go down below to turn the steam on, he was challenged by Tracey, and told he had better not do this and that, and that was the reason why the Chief, the head

of his department, singled these two men out, to leave them go.

Q. Mr. Robinson and Mr. Norton reported to you, did they not, just what conversations they had with both Tracey and Fergeson, as to the incident in the engine room?

A. They covered pretty briefly that their disappointment in them seemed to be their disobedience to orders.

Q. They also told you, did they not, that Tracey stated his reason for not keeping the steam up was because the union wished recognition?

A. I don't know that that point was just brought out.

Q. Then the officers did not report fully what happened in the engine room?

A. They reported that Tracey had made this challenge against the officer in charge, which was the second assistant going down to the engine room to turn the steam on.

Q. But it is your testimony that the officers did not tell him exactly what occurred down there, and the conversations they had with Tracey and Fergeson?

A. I don't just recall the extent of their full conversation in that respect, but the outstanding part was their disobedience, and the Chief was very much annoyed about them not responding to his orders, and that that was the reason why these men were singled out more than the other men that were sitting out, the same as those two men.

Q. But certainly it stands out in your mind, does it not, and it would have been reasonable for you to ask Mr. Robinson and Mr. Norton, just what these men had to say when he went down and said, "What is the trouble, boys"?

A. I am just trying to refresh my mind on what was all said at that time.

Q. Well, can't I help refresh your recollection by asking you whether or not the officers said that Tracey replied, "There won't be any steam, because we won an election, and we wish union recognition"?

A. I don't recall that being said.

Q. You don't recall that?

A. No. If it was said, I don't recall it.

Q. From the reports that you gathered from your officers, wouldn't you say, as a matter of fact, that these men would not have been discharged if that difficulty of July 18th had not occurred?

A. Will you put that again, please?

MR. CASTIELLO: Will you read the question, please, Mr. Reporter?

(Question read.)

A. Well, I really don't know whether they would have been discharged or not. The fact that they were disobedient at other times, plus this of July 18th, gathering all those things together, they might have been, for all of that, discharged. We don't get in on it, only when the come to us and make a report, that "We are leaving," we will say, "John Brown," or "Bill Smith," or somebody go, and they would tell us.

We might question them why they are leaving them go, but we don't cross their judgment on it. So these cases were brought out to us, and they seemed to have a perfectly good reason why they were leaving those men go, and of course, we didn't cross their judgment.

Q. Let's get down to the real meat of this thing. Isn't it true that when these officers reported to you, the big discussion was the action these men took in Houston on July 18th?

A. That is correct.

Q. That was the real meat of their discharge, too, wasn't it?

A. I would think that was, yes.

Q. I think you are right.

A. Yes.

Q. These other matters that they discussed with you, about previous conduct, in and of themselves did not amount to such a seriousness, did they?

A. No. No, this was the main issue, I believe, their reason for leaving them go. You are talking about Mr. Norton's men now?

Q. I am talking about all the men who were discharged.

A. The men in general?

Q. Yes.

A. I won't say that about the men in general.

Q. Would you just say that about Fergeson and Tracey?

A. That is what I thought you were referring to at that time.

TRIAL EXAMINER SEAGLE: You use the singular, "that is." Do you mean the ones?

THE WITNESS: I thought he was referring to Mr. Norton's men, Mr. Tracey and Mr. Fergeson.

By MR. CASTIELLO:

Q. So, as far as Tracey and Fergeson were concerned, we are in agreement that the reason for their discharge was the action they took on July 18th?

A. Yes.

Q. What was said to you about the discharge of Mr. Pfuhl?

A. I don't believe Pfuhl was a man that, really, they should have had on the boat, for, as I gathered from this conversation when they returned to Philadelphia, that man should have been let go sometime ago.

Q. The fact is, he was never let go before, was he? He wasn't let go?

A. No. But from what I could gather at this particular time when they did leave him go, we really, perhaps, should have criticized our officers for not letting him go sooner.

I understood that the man was practically not very good, as far as taking an interest in his job or himself, and we could have gone out and put better men than that on, and that should have been done long ago, and not waited until this particular time to do it.

Q. That was the first time you ever heard any criticism directed, of that nature, apart from what happened on July 18th, concerning Mr. Pfuhl?

A. I believe I had heard before about his drinking.

Q. Mr. Pfuhl's drinking?

A. Yes. I heard about Pfuhl's drinking, but also other charges, which maybe we don't want to include, some stealing, or something like that.

I know he was being investigated down at the pier at one time, the police officers came over from Jersey, and they had some question about Pfuhl, and I believe at that time they took him off the boat. Now, I think he was later cleared on those charges.

I don't know whether they couldn't prove the charges, but he and his brother-in-law, or somebody, were implicated in some stealing. Now, he had also urged charges about his conduct at Houston. I believe he was arested at Houston at that time by the authorities.

Q. When you say, "I believe," are you stating what you know?

A. What I had heard.

Q. From whom?

A. From one of the officers on the boat, I think it was Captain Rudan.

Q. You heard Captain Rudan's testimony this morning, didn't you?

A. Yes.

Q. He didn't mention anything like that, did he?

A. I didn't hear him mention it today, no.

But it was either Captain Rudan, or one of the officers, on the boat, that brought out the point about this man being challenged, and, if my recollections are correct, he was taken by the State troopers down there, the Texas rangers, arrested.

Q. For what?

A. For conduct, and his talk in front of ladies, and all, that happened to be in and around the docks. We come

into an open dock down there, and visitors are permitted in and around the dock, because it is a municipal dock, and the State rangers, I believe, arrested this man, this man Warren.

Q. Now, who are you talking about, Pfuhl, or Warren?

A. Warren, I think it was, was arrested.

Q. You are talking about Warren, now?

A. Yes.

Q. Did you ever receive any report that Pfuhl had been drinking?

A. Pfuhl?

Q. Yes.

A. Yes, we had reports on Pfuhl drinking.

Q. I am interested in knowing. This is the first time I have heard that Pfuhl had been drinking. May I ask this: Did Pfuhl's alleged drinking have anything to do with his discharge?

A. No, I don't believe Pfuhl's.

Q. It didn't? So, for the purpose of this issue, we can forget about Pfuhl's drinking?

A. I am not sure about Pfuhl.

MR. CHILDS: I am willing to stipulate, for the Respondent, that you may.

MR. CASTIELLO: All right.

As a matter of fact, I think the witness confused Warren and Pfuhl.

TRIAL EXAMINER SEAGLE: Mr. Sherry, you have been here throughout the hearing, haven't you?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You have heard the testimony of all the witnesses?

THE WITNESS: Yes, practically—I haven't been here for all of it, no.

TRIAL EXAMINER SEAGLE: Did you hear the testimony of the ship's officers?

THE WITNESS: Some, not all.

TRIAL EXAMINER SEAGLE: Did you hear the Captain's testimony?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did you hear Mr. Norton's testimony?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did you hear the mate's testimony?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Did you hear Mr. Kuhtreiber's testimony?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You heard Mr. Norton and the Captain testify. Did you hear either of those gentlemen say anything at all about Mr. Pfuhl having been drinking?

THE WITNESS: Pfuhl's was disobedience and carelessness about his work.

TRIAL EXAMINER SEAGLE: Well, when you stated some time ago that you received a report that Pfuhl was drinking, you were confused, weren't you? That is not true, is it?

THE WITNESS: I had heard from someone, not to the extent of a complaint, that Pfuhl had been drinking.

TRIAL EXAMINER SEAGLE: I am not interested in what you heard from someone. Did you hear from anybody on the ship, from any of his superiors, that he had ever been complained against because of drinking?

THE WITNESS: No, not seriously complained against.

TRIAL EXAMINER SEAGLE: Did you hear anything about that?

THE WITNESS: I had heard from someone about Pfuhl drinking.

TRIAL EXAMINER SEAGLE: I am not questioning you about whether you heard from some friend of Pfuhl, or some shipmate of his, but whether you ever heard from any of his superiors that he had been drinking, that they had cause for complaint on that score?

THE WITNESS: No cause for complaint about it.

TRIAL EXAMINER SEAGLE: They never mentioned that to you, did they?

THE WITNESS: None of the officers, I don't believe.

TRIAL EXAMINER SEAGLE: That is what I want to know.

THE WITNESS: No. I was confused with——

TRIAL EXAMINER SEAGLE: Did any of the officers——

THE WITNESS (continuing): —I was confused with this Warren, on that Houston incident.

TRIAL EXAMINER SEAGLE: Did any of the officers ever say anything to you about Warren having been arrested for stealing?

THE WITNESS: I knew that.

TRIAL EXAMINER SEAGLE: Didn't you confuse him with somebody else?

THE WITNESS: No. It was Pfuhl who was arrested for that.

TRIAL EXAMINER SEAGLE: Not Warren?

THE WITNESS: No.

MR. CHILDS: Just for the sake of protecting these men, because we haven't anything against them in the way of going into their records, and that is positive, the witness, when he speaks of Pfuhl being arrested on the dock at Houston, is intending to refer to Warren.

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: Who was the witness that testified he had been arrested?

MR. MCKAIG: Pfuhl testified he had been arrested, on his direct examination.

TRIAL EXAMINER SEAGLE: There was no testimony that Warren was arrested?

MR. MCKAIG: No.

THE WITNESS: I was confused about Pfuhl, and Warren.

TRIAL EXAMINER SEAGLE: Well, you are clear now that you had never received any report that Warren was arrested?

THE WITNESS: No, Warren was not arrested. Pfuhl was arrested. It was Warren that was arrested at Houston.

By MR. CASTIELLO:

Q. For what?

A. By the State troopers.

Q. What was he arrested for?

A. For a very foul mouth, I believe.

Q. Without going into where you got this information, perhaps you can tell us whether or not his alleged arrest for using foul language had anything to do with his discharge?

A. I think all those things——

Q. You ought to be able to tell us that, Mr. Sherry.

A. Yes. I would say all those things multiplied and led up to leaving the man out, when there is something

more serious comes along. Those things are overlooked at that particular time. When there are more things added to it, they are all multiplied, and it gives more reason for not being too lenient with the man.

Q. Who told you about Warren having been arrested at Houston?

A. One of the officers on the boat.

Q. Who was the officer?

A. I think it was Captain Rudan.

Q. And when did he tell you about it the first time?

A. I can't recall that.

Q. Well now, you certainly should give us some idea. Was it before July 25th, or after, or when did it occur?

A. It was before July 25th.

Q. How long before July 25th?

A. Well, now, I want to be fair about these things, but I have got a lot of things to remember, and I just can't remember how long.

We hear not only from one ship, but we hear reports from different ships, and you sometimes get maybe a little confused.

TRIAL EXAMINER SEAGLE: Was it a long time before July 25th, or a short time?

THE WITNESS: Well, I would say it was a short time, not very far removed from July 25th.

TRIAL EXAMINER SEAGLE: What do you consider a short time?

THE WITNESS: It might have been a couple of months before, or something like that. I just can't recall.

By MR. CASTIELLO:

Q. And after you received that report, which you believe was from Captain Rudan, you nevertheless reshipped Mr. Warren, did you not?

A. Well, we don't interfere——

Q. No. You did?

A. Yes.

Q. What were you going to say? You don't interfere with what?

A. I say, if we hear those reports, and it is not recommended by the captain that we leave this man go, or that man go, or that he is leaving that man go, or this man, we don't enter into it and say, "Well, why don't you get rid of this man?" or "Get rid of that man."

Q. But you did enter into it on July 25th, when you discharged him, according to your testimony?

A. I didn't discharge them. They were discharged by Captain Rudan.

Q. I am speaking of the company.

A. Oh!

TRIAL EXAMINER SEAGLE: My question would be this: Was anything said to you by the Captain in connection with the arrest of Warren for profanity, on the day after the ship docked in Philadelphia?

THE WITNESS: I don't know whether it was just that time or not, that same trip.

TRIAL EXAMINER SEAGLE: Did he give you that as one of the reasons for discharging him? I mean, did he specifically mention that?

THE WITNESS: That was mentioned. I am not sure that was mentioned just around July 25th.

TRIAL EXAMINER SEAGLE: You heard the Captain's testimony this morning?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You didn't hear him say anything about that?

THE WITNESS: No. I do think—may I be permitted this remark?

By Mr. Castiello:

Q. Go ahead.

A. I think all those things led up, as I said before, to his final discharge as of July 25th.

Q. Although the Captain himself did not even mention that to you when he was recommending his discharge?

A. No.

Q. You mean "No, he didn't mention it"?

A. That's right.

Q. Isn't it a fact that this arrest of Mr. Pfuhl for larceny in the State of New Jersey had nothing to do with his discharge?

A. That doesn't have anything just to do with his discharge.

Q. Then we are clear on that. That had nothing to do with his discharge?

A. Well, I might say all those petty things, if you want to call them petty things, we wouldn't possibly just discharge him for that, but his disobedience to orders, and things like that, plus his general inefficiency on the boat, not responding, or not being a good worker, and then having these other reports about him, none of those things helped. You can appreciate that in your own organization here, I think, if you had a girl that was inefficient, and you also heard some other things about her, that certainly wouldn't help to make it easier for that girl to hold her position.

Q. Isn't it a fact that you never conducted an investigation to see what the extent of the difficulty Mr. Pfuhl was involved in, in New Jersey, was?

A. No. We understood——

Q. Did you conduct an investigation? Please be responsive.

A. We asked the chief of police, yes, about——

Q. When did you ask the chief of police?

A. (Continuing.) —his reasons for looking him up. And the police officer, whether he was the chief or not,

came over to the ship that time to look him up, and it was either for stealing scrap, or stealing an automobile, or being a part of it, or something. In fairness to the man, I think he was exonerated of those charges afterwards, and I believe the brother-in-law, or some connection with the family was, I believe, held on the charges.

I might also say that we got letters from some of these credit houses as to Mr. Pfuhl, about his credit, and we brought that up to his attention, as to meeting his moral obligations.

Now, we did not leave him go on those things, but none of those things add to the man's credit, afterwards, if you get other reports from the Captain that he is going to leave this man go. You don't have many things in his favor, if you did want to find any good things out about the man, you don't have anything to say anything good about him.

Q. Did the Captain know anything about Mr. Pfuhl's arrest?

A. I don't know whether he did or not.

Q. Did the Captain know anything about these letters that you say you got from the credit association?

A. I don't know about that.

Q. As a matter of fact, Mr. Sherry, he wouldn't know unless you told him. Did you tell him?

A. No, I don't believe I did.

Q. And you testified that Captain Rudan discharged these men, and not you?

A. That is correct.

Q. And, if he did not know about these two things, he certainly couldn't have had them in his mind when he discharged Mr. Pfuhl?

A. Possibly not.

Q. Did you advise any of the officers on the ship that the certification of the union was in the hands of the Board, after the decision of the Board of January 26, 1938?

MR. CHILDS: May I hear that question?

(Question read.)

A. I don't know whether I did or not. I can't recall.

By Mr. Castiello:

Q. You heard the Captain's testimony this morning, did you not?

A. Yes.

Q. On that particular point?

A. Yes.

Q. In which he said that he had never spoken to you about it?

A. Yes.

Q. Do you know whether or not you had spoken to the Captain?

A. I don't recall.

Q. Did you speak to any of the crew about the certification of the Board?

A. Not to my knowledge.

Trial Examiner Seagle: Just what do you mean by that? Do you mean you don't recall?

The Witness: I don't recall talking to them about that.

Trial Examiner Seagle: One way or the other?

The Witness: No.

By Mr. Castiello:

Q. What was the reason for the discharge of Mr. Smith?

A. I think we covered that before.

Q. I want to hear it again, to see what you had to say about it.

A. Mr. Smith seemed to assume sort of a superior attitude, as I had heard, and didn't want to assume his obligations, which were part of his duties, the steward was disappointed in him, and I believe very much disappointed in him, because he was the one that practically

took him the first time I believe that he ever went to sea, so the steward felt he was the one that recommended him, and employed him——

Q. Now, excuse me. Was he disappointed because Mr. Smith didn't obey his orders on July 18th?

A. That was the main feeling about him leaving him out at this time.

Q. And that was the reason that he recommended his discharge, was it not?

A. That is correct; but I believe he had been disappointed in him for some time, and was, as I understood, almost to the point of leaving him out.

Q. But despite his disappointment for a long time, Smith was continuously reshipped by the Southern Steamship Company?

A. That is correct.

Q. Isn't it a fact that the steward never, before July 25th, ever spoke to you about Smith?

A. That is correct.

Q. Now, we have established that Fergeson, Tracey and Smith were discharged for their action on July 18th, have we not?

MR. MCKAIG: One moment. I object to that question.

He is asking him to state an opinion on the evidence.

MR. CASTIELLO: I will reframe it. Perhaps you might gather it from that.

By MR. CASTIELLO:

Q. You and I have agreed, have we not, in your testimony, that Fergeson, Tracey and Smith were discharged because of their actions on July 18, 1938?

A. For their disobedience, Tracey's and Fergeson's disobedience of orders, and the almost threatening attitude Tracey had against Robinson, the second——

Q. On July 18th?

A. Yes.

MR. CHILDS: Can he finish, as to the other men?

A. (Continuing.) —the almost threatening attitude that Tracey took towards Robinson, the second engineer, who was in charge of the engine room, the department that Robinson comes under, it was decided best to leave those two men out, and that all happened around July 18, 1938.

By MR. CASTIELLO:

Q. As to Smith, he was discharged because of his disobedience on July 18th also, was he not?

A. Yes.

Q. Now, as to Mr. Pfuhl, isn't it a fact that the main reason for his discharge was also his disobedience on July 18th?

A. No. Mr. Pfuhl, as I understood it, was very careless about his work, was an inefficient workman, and they left him go for his disobedience on July 18th, plus numerous things that they had, and should possibly have left him go long before July 18th.

Q. But the fact is they didn't let him go before July 25th?

A. That's right.

Q. And, if this trouble had not occurred on July 18th, 1938, Pfuhl would probably still be working for the company, would he not?

A. I can't say that. I doubt it very much, from what I hear, whether——

Q. Let me ask you this:

MR. CHILDS: May he finish, please?

MR. CASTIELLO: Go ahead.

A. I doubt very much, from what I hear, whether the mate would have kept him any longer, because of his disappointment in him, and the fact he had complained about him a number of times before.

From what I heard just today, from the other mate's complaints, I am surprised he was kept there that long. Possibly, had we heard some of those things, we would have been ready to tell the mate, or the Captain, "Well, if you are disappointed with that man, you should have left him go long before July 18th, or July 25th, either."

By Mr. Castiello:

Q. You are surprised, are you not, that these complaints about Pfuhl, happening before July 18th, were not reported to you?

A. I am a little disappointed——

Q. Yes.

A. (Continuing.) —that they did not leave that man go before July 18th or July 25th, I am disappointed that they should have kept a man like that, that is inefficient, and not only had been reported by one officer who was his superior, but by the third officer, he should have been left go long ago.

Q. Now, as to Mr. Warren, wouldn't you say he was discharged because of his actions on July 18th?

A. I guess that would be the main reason why he was left go.

Q. Yes.

A. But he had that other weakness that we complained about.

Q. What is that weakness you are speaking of?

A. Well, he was offensive down at Houston there, he was arrested by the State rangers, or something like that, and that was——

Q. Now, stop there, Mr. Sherry. You testified previously, in answer to the Examiner's question, that neither Captain Rudan or any of the other officers reported this alleged foul talking of Mr. Warren at Houston.

A. I said one of the officers—and I thought it was Captain Rudan, had made this report, a trip or so before.

Trial Examiner Seagle: What Mr. Sherry said was, as I understand it, that nothing was said by any

of the officers after the ship arrived in Philadelphia on July 25th.

MR. CASTIELLO: As a reason for his discharge?

TRIAL EXAMINER SEAGLE: As a reason for his discharge.

MR. CASTIELLO: Yes, that is what I understood.

TRIAL EXAMINER SEAGLE: But I believe the original testimony was that you got that information from Captain Rudan, I mean, the information about Warren's profanity?

THE WITNESS: Yes. I am not just saying it was Captain Rudan. It was one of the officers.

TRIAL EXAMINER SEAGLE: It was sometime before July 18th?

THE WITNESS: It was one or two trips before July 25th.

TRIAL EXAMINER SEAGLE: But the information you originally got from Captain Rudan, you said, was some months before July 18th?

THE WITNESS: When I said "months," I mean trips. Our trip is twenty-one days.

TRIAL EXAMINER SEAGLE: Twenty-five days?

THE WITNESS: Or twenty-five days, yes. It could be one or two trips before.

TRIAL EXAMINER SEAGLE: You used the term "months." You didn't say "trips."

MR. MCKAIG: He did testify to reports on drunkenness.

TRIAL EXAMINER SEAGLE: He withdrew those in connection with Pfuhl?

MR. CHILDS: That was Warren.

TRIAL EXAMINER SEAGLE: Yes. I understand that is not the man, now.

MR. MCKAIG: I mean, he had those reports on the 25th.

By MR. CASTIELLO:

Q. On the 25th, in order to clear this up for all purposes, isn't it a fact, Mr. Sherry, that the Captain, in recommending the discharge of Warren, did not speak to you about his arrest of a few months ago in Houston, for foul language?

A. The Captain on the 25th did not speak of that, at that time, no.

Q. These men, of course, were not arrested for their actions in Houston, were they?

A. Yes, the State rangers arrested him.

Q. You misunderstood me. On July 18th, 1938, in Houston——

A. Yes.

Q. (Continuing.) —the strikers were not arrested?

A. No.

Q. The company never preferred any charges at that time, or any time afterwards, with any agency?

A. The charges were brought to the attention of the shipping commissioner in Philadelphia, as well as the local inspectors, but not pressed.

Q. That's right. As a matter of fact, they were not brought in the form of charges, were they?

A. Well, I don't know whether—they were not pressed charges, but they were brought up in front of both the shipping commissioner and the United States local inspectors as a complaint, we will put it, but not pressed charges.

Q. Why weren't they pressed?

A. Because we,—the Captain,—didn't want to be too tough on the men.

If we had pressed those charges, I dare say their certificates could be lifted, and that possibly would have been

a detriment for that man to go out and get employment. We didn't want to do that.

We were leaving these men out, and we thought that would be enough. We left them out, and, for our own good they were left out, but we didn't want to embarrass them or jeopardize them going out and getting a job somewhere else, so we didn't press the charges. But those complaints are in front of the United States Shipping Commissioner, and they are in front of the United States Local Inspector, in their proper order, without being pressed.

Q. Do you mean to tell me that a complaint before the inspector and the shipping commissioner is placed merely by writing a letter to them?

A. Well, that is a complaint, yes.

Q. Is that complaint in the form that it should be made, in the event you want to press charges?

A. I think we could——

Q. Answer my question, will you?

A. Is that complaint in the form that you want to press charges, is that what you said?

Q. Yes.

A. We don't want to press charges.

Q. You are still not answering my question. If you did want to press charges, you would have pursued another method by which you would have notified the shipping commissioner and the United States inspector, other than by writing letters?

A. No, I think that was perfectly in order, just what was done now, without going any further into it. If we wanted to carry it to the extreme, we would have placed it in the form of a charge right then.

Q. That is what I am speaking of.

A. And they would have had a hearing on it, and it would have been determined then whether or not there was justification for lifting their certificate.

TRIAL EXAMINER CHAGLE: To save time, Mr. Sherry, you didn't file any charges that would have necessitated a hearing?

THE WITNESS: No.

By MR. CASTIELLO:

Q. Do you know why the strike was ended, or, to use language which you probably prefer, why the men discontinued refusing to obey orders, on July 18th?

A. Well, that was handled all at Houston, but as I understood it over the phone,——

Q. Pardon me. From whom did you understand it?

A. From Mr. Shreider and Mr. Rayzor.

Q. And when did you have the phone call?

A. They called us, we talked to them in the afternoon.

Q. Of what date?

A. Of July 18th, I believe it was.

Q. Was that before or after the trouble was settled?

A. That was the day that the men were sitting down and not responding to duties or living up to their obligations that they were assigned to.

Q. Listen to my question: Was this phone call that you are now speaking of made to you before the trouble was settled, or after the trouble was settled?

A. It was on the same day that the men were on this sit-down at Houston.

Q. Yes, I know that.

A. And they were sitting down when we got the call, we talked to them that afternoon over the phone.

Q. So that, if they were sitting down when you got the call, that was before the trouble was over?

A. That's right.

Q. Tell me who spoke to you, what he had to say, and what you had to say?

A. As near as I can recollect, Mr. Shreider spoke.

Q. Your local agent?

A. Yes. He spoke to us, and told us about the men sitting down aft, and did not respond to duty.

Q. And did he tell you why they were sitting down?

A. Well, as we could gather the story from them, they wanted recognition of their union, and wanted the men, their

delegates, to come aboard the ship, to be allowed to come aboard the ship.

Q. Now, what did you have to say?

A. We told them we was not leaving anyone go aboard our boat.

Q. Yes. And what else?

A. Well, we told them that they should ask those men to honor their contract, that they were signed on before a United States Shipping Commissioner, and that the contract expired in Philadelphia, they were signed on in Philadelphia for a round trip, and for them to talk that over with the men and tell them that they should live up to their contract.

Q. All right. Now, stop there, will you? What did you have to say to Mr. Rayzor about union recognition, which the union was demanding?

A. I don't know whether there was much conversation about the demand, only to the extent that the men wanted to have permission to go aboard our boat.

Q. Didn't you just tell me that he spoke about union recognition, also?

A. Shreider spoke about the men wanted recognition, about leaving the delegates go aboard our boats.

Q. Do you mean to tell me now he limited recognition to passes for delegates?

A. That was pretty much the conversation of both Shreider and Rayzor, both.

Q. Didn't Rayzor tell you over the phone that these men are sitting down because they won an election, and they want union recognition?

A. That's right——

Q. What did you have to say about the election?

A. (Continuing.) —that they won the election, and they wanted recognition for the men to be issued passes to go aboard our boat.

TRIAL EXAMINER SEAGLE: The question is very simple.

What did you say to that proposition?

THE WITNESS: We told them we were not issuing passes.

TRIAL EXAMINER SEAGLE: No. You have just testified that Mr. Shreider told you that the men had won an election, and therefore wanted union recognition. What did you say to that?

THE WITNESS: We told them we was not leaving anybody go aboard our boats.

TRIAL EXAMINER SEAGLE: He said two things to you, as you testified.

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: One, that the men had won the election, and wanted union recognition. Two, that they wanted passes for their delegates to go aboard.

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: What did you say about each one of those propositions?

You have told us so far only what you said with respect to the proposition that the company issue passes. Now, the question is, what did you say to the first proposition, that the company recognize the union?

THE WITNESS: That didn't seem to be the main question. The question was that the delegates——

TRIAL EXAMINER SEAGLE: I didn't ask you whether it was the main question. I wish you would attempt to answer the question as put to you. What did you say to that proposition?

THE WITNESS: We told them, if I recollect myself correctly, that we wasn't leaving anybody aboard our boats, and requested that the men honor their contract signed before the commissioner here, and come back to Philadelphia.

TRIAL EXAMINER SEAGLE: Did you deem that an answer to the proposition that you accord recognition to the union?

THE WITNESS: Well, I guess we did.

TRIAL EXAMINER SEAGLE: You meant by that, that by granting passes, you would accord recognition to the union? You meant that would be a token that you had accorded recognition?

THE WITNESS: That seemed to be the thing that they were most concerned about, that we issue passes that they go aboard our boats.

TRIAL EXAMINER SEAGLE: The question I am asking you is this: Was the emphasis put upon the question of getting passes for the union delegates, because that would have signalized the fact that the union was recognized by the company?

THE WITNESS: I would think, possibly, with you, that that was their thought in mind.

TRIAL EXAMINER SEAGLE: Didn't you understand that, that if you did give them passes to go aboard, that is, give passes to the delegates, that you would, in effect, have been according recognition to the union?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Isn't that true?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And therefore didn't you also understand that by refusing to give them passes you were refusing to accord recognition to the union?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Doesn't that work both ways?

THE WITNESS: You can possibly put it that way, but we don't issue passes, we don't want to issue a pass to anybody, whether it is union or non-union, or anything, if you know what I mean. We don't issue passes for anybody going aboard our boats. We do that for safety measures, so that there is nobody injured aboard our boats, and suit could be brought.

TRIAL EXAMINER SEAGLE: My question is this, that if you had decided to alter your practice, and to issue passes to union delegates, that would have been an act of recognition of the union, isn't that so?

THE WITNESS: I guess you could say that.

TRIAL EXAMINER SEAGLE: You would have been according recognition to the union in issuing passes to their delegates?

THE WITNESS: Yes, I would think so.

TRIAL EXAMINER SEAGLE: And by refusing to issue the passes to the delegates, you were indicating you didn't want to deal with the union?

THE WITNESS: I would think so, yes.

By MR. CASTIELLO:

Q. What did you tell Mr. Rayzor about the status of the election, in this telephone conversation?

A. We told him that that would still be a question that was up to the Board, and that we didn't think it was entirely settled yet.

Q. You knew that the question was entirely settled, as far back as January 26, 1938, didn't you?

A. No, I don't think it was entirely settled, and I think that there is still a question that is being handled.

Q. Listen to me, Mr. Sherry, and don't be evasive, please.

A. I am not evasive on it. I don't want to be evasive on it.

Q. Then be responsive.

MR. MCKAIG: I move to strike it out as a reflection on the witness, that he is attempting evasion.

THE WITNESS: We are all here to straighten and help each other out.

TRIAL EXAMINER SEAGLE: The statement of counsel will be stricken from the record.

Will you confine yourself to questioning, Mr. Castiello?

MR. CASTIELLO: I shall, but it is so apparent the witness is not responsive.

THE WITNESS: I am responsive.

MR. CASTIELLO: All right.

By MR. CASTIELLO:

Q. Didn't there come a time in January when you heard that the Board decided that the N. M. U. was the bargaining agency for the licensed men of the crews——

TRIAL EXAMINER SEAGLE: Did you say "licensed"?

By MR. CASTIELLO:

Q. —unlicensed men of the crews of the Southern Steamship Company?

A. I understood that the Board made certification, or something, but that it was still a question that was not fully settled, and that was in the hands of our counsel, and it is not entirely settled yet.

Q. Did you ever read that decision?

MR. CHILDS: May I make a statement, counsel, as I see it? Do you want a statement of position of counsel for Southern Steamship in this matter?

TRIAL EXAMINER SEAGLE: I think the position of counsel has already been made clear.

The Board had made a certification.

THE WITNESS: The Board had made a certification.

TRIAL EXAMINER SEAGLE: And had certified that the N. M. U. was entitled to be the exclusive representative of the unlicensed personnel of your vessel.

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: That is correct, isn't it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: But it was the position of the company that the election had been conducted in some manner of which you did not approve?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: And for that reason you were taking the position that you would not bargain with the union?

THE WITNESS: That is correct, that it was still up.

TRIAL EXAMINER SEAGLE: And you took that position from the time the certification of the Board was made? You never recognized the validity of that certification?

THE WITNESS: That's right. That was a question that was still being under discussion, or under way with our counsel.

By MR. CASTIELLO:

Q. So that, Mr. Sherry, your letter of August 23, 1938, Board's Exhibit No. 7—you are familiar with that, are you not?

MR. MCKAIG: Showing witness paper.

MR. CASTIELLO: Yes.

A. Yes.

By MR. CASTIELLO:

Q. That is the same position that the company took from the very time that the Board certified the union on January 26, 1938?

MR. CHILDS: Just a minute. I want to object. The objection is that that is irrelevant; my thought being that what was in the minds of the company is not the question.

TRIAL EXAMINER SEAGLE: The objection is overruled.

By MR. CASTIELLO:

Q. Will you answer the question?

A. What was the question, please?

MR. CASTIELLO: Will you read the question, Mr. Reporter?

(Question read.)

A. That is the feeling we had, that it was still a question that had not been fully decided, and we were leaving it in the hands of our counsel.

By MR. CASTIELLO:

Q. That is the position you take today, too?

A. Yes.

MR. CASTIELLO: That's all.

MR. CHILDS: Just a question or two.

RE-DIRECT EXAMINATION.

By MR. CHILDS:

Q. Referring to these telephone conversations you had with Mr. Shreider and Mr. Rayzor before the termination of the so-called sit-down strike on July 18, 1938, did either Mr. Rayzor or Mr. Shreider have the authority to make any agreement in behalf of the Southern Steamship Company relating to this so-called sit-down strike?

A. No.

Q. Who had that authority?

A. We had that authority here—I did.

Q. By the way, subject to objection of counsel for the Board, you have a telegram that you received from Shreider that night with reference to the termination of that so-called sit-down strike?

A. Yes, I had one there on the table, today. I think it was with those papers that you got, that shipping commissioner's letter.

MR. CHILDS: Will you mark this Respondent's Exhibit 8, for identification?

(Thereupon, the document abover referred to was marked as Respondent's Exhibit No. 8, for identification.)

MR. CHILDS: In my last question, I think I said "that night," July 18th. I should have said the morning of the 19th.

By MR. CHILDS:

Q. I show you Respondent's Exhibit 8 for identification, and ask you whether that was a telegram you received early on the morning of July 19th from Mr. Shreider?

A. That is correct.

MR. CHILDS: I offer it in evidence.

MR. CASTIELLO: I object to that. I just want to go into the question of this telegram.

By MR. CASTIELLO:

Q. Is this the form in which this telegram came to you, Mr. Sherry, Respondent's Exhibit 8 for identification?

A. Yes.

Q. Are you certain of that?

A. Sure, I am certain of it. It is on our file.

Q. Did you receive the telegram over the phone, or was it delivered to you?

A. Why, that came over the mail—or, it came over from the Western Union or Postal Telegraph, was sent over.

Q. Where did it come from?

A. The Postal Telegraph.

Q. I show you Board's Exhibit No. 5. Isn't it a fact that telegrams in the original form come, as is Board's Exhibit No. 5, not typed, as this is?

A. Typed that way, you mean?

Q. Yes, with these slips pasted on, indicating the manner in which it came over the wire.

A. We have gotten telegrams like that before, being typed.

MR. MCKAIG: Is there any difference?

TRIAL EXAMINER SEAGLE: I must say, I have never gotten one that wasn't like Board's Exhibit 5.

MR. CASTIELLO: I have never seen anything like Respondent's Exhibit 8 for identification.

MR. CHILDS: If the hearing were suspended for a moment, could you call up the office and see if you have a telegram sent at that time, of which this may be a copy?

THE WITNESS: A copy?

MR. CHILDS: I apply, Mr. Examiner, to let him telephone to his office.

TRIAL EXAMINER SEAGLE: Certainly. The hearing is recessed for a few minutes.

(A short recess was thereupon taken.)

TRIAL EXAMINER SEAGLE: The hearing will come to order.

THE WITNESS: Our office said that telegram was phoned, and they will look up and see if they have the original there.

MR. MCKAIG: This definitely says "confirmation," telegram phoned.

THE WITNESS: If it is not there, I have given them all the details from this, and they are going to call the Postal Telegraph Company and get the original. Sometimes they phone them in.

By MR. MCKAIG:

Q. This was phoned, it says so?

A. Yes, that was phoned at the house.

TRIAL EXAMINER SEAGLE: I do not believe, of course, counsel is insisting on the original telegram that was actually filed. He wants the copy usually made by the telegraph company, delivered to the person to whom the telegram is sent.

MR. MCKAIG: I think that is, unquestionably, the copy that was mailed after being phoned. When the telegram is delivered, you get it in that strip form, but when it is mailed, I think they just get a copy like that. That has been my experience, because I get them out in the country all the time.

TRIAL EXAMINER SEAGLE: At any rate, there has been a doubt raised as to whether this is a true copy of the telegram, as you realize that in phoning a message, some of the words may be changed from what they were in the original, that not infrequently happens, and, in view of that fact, I think the original copy ought to be produced.

However, may I make this suggestion: That for the present, you offer this, with the understanding that you will, tomorrow, produce the telegraph company's copy?

MR. CHILDS: That is, that I will produce normally the telegram received from the telegraph company——

TRIAL EXAMINER SEAGLE: That's right.

MR. CHILDS: (continuing): —or will offer the original record of the Postal Telegraph Company?

TRIAL EXAMINER SEAGLE: Yes, either will do.

MR. CHILDS: Or will offer evidence that this is in fact the telegram which was received from the telegraph company?

TRIAL EXAMINER SEAGLE: At any rate, the understanding is, to put it briefly, the fact that this is a true copy of the telegram that was originally sent is to be established by further evidence.

MR. CHILDS: All right.

TRIAL EXAMINER SEAGLE: And unless that is done, of course, it will not be deemed to be admitted in evidence.

MR. CHILDS: I understand, if it is done, the telegram is received in evidence?

TRIAL EXAMINER SEAGLE: I have not heard any other objection to it.

MR. CASTIELLO: You see, Mr. Examiner, the testimony of Mr. Sherry, in answer to my questions, was that this is the telegram he received, and that it was not telephoned. For that reason, I made the objection. You recall that, don't you, Mr. Childs?

MR. MCKAIG: I think we had better straighten him out on that.

THE WITNESS: Understand, I don't mean to be deceiving or anything like that.

MR. CASTIELLO: Oh, I don't say that you are.

THE WITNESS: What I wanted to bring out was, that was the extent of the wire received from Houston, Texas. Now, whether that is a copy, or a copy of the original copy, I can't say.

By Mr. McKaig:

Q. When you said that the telegram was not telephoned, you were mistaken, weren't you?

A. Yes.

Q. The exhibit shows on its face that it was telephoned?

A. That it was phoned, I see that, yes, "Confirming telegram."

Q. What you meant to say with regard to this particular copy, the exhibit, was that this is the copy that you subsequently received from the telegraph company?

A. That's right.

Q. To the best of your recollection?

A. Yes. They are looking up to see if they can get the original.

Trial Examiner Seagle: I take it, then, that you have no objection to this telegram if further testimony is adduced to establish that it is a true copy?

Mr. Castiello: That's right.

Trial Examiner Seagle: Subject to the production of such additional proof, the telegram will be admitted in evidence as Respondent's Exhibit No. 8.

(Thereupon, the document above referred to, heretofore marked for identification as "Respondent's Exhibit No. 8," was received in evidence.)

The Witness: If they don't find the original in our office, they are going to contact the Postal Telegraph Company to get the original.

Mr. Childs: No further questions.

Re-Cross-Examination.

By Mr. Castiello:

Q. You knew that there was an agreement settling this affair of July 18th in Houston?

A. This agreement that they agreed upon down there.

Q. What was the substance of that agreement? First of all, what is your source?

A. Well, I believe the two attorneys, Mandell and Mr. Rayzor, were going to discuss this a day or so following.

Q. How do you know that they were going to discuss it?

A. Because I understood that on the phone conversation, from Mr. Rayzor.

Q. Just what were they going to discuss?

A. About issuing passes to the delegates to go aboard our boats.

Q. What else?

A. That seemed to be the question in mind.

Q. Were they going to discuss an agreement with the company also?

A. No. That seemed to be the main question, whether or not they couldn't go aboard our boats, and about the election that was conducted sometime before, and they felt as if they should have passes issued to go aboard our boats.

Q. Do you know whether or not further discussions were had on passes?

A. No, I don't know that there were.

Q. If there were further discussions, certainly you would know, would you not?

A. I believe I would, yes.

By Mr. Childs:

Q. As a matter of fact, no agreement could be made that would be binding upon the Southern Steamship Company without your consent, could it?

A. No. They had no authority to make any agreement down there.

By Mr. Castiello:

Q. But Mr. Shreider was your local agent, was he not?

A. Yes.

Q. And Mr. Rayzor is your local attorney?

A. Yes, at Houston, Texas.

By MR. CHILDS:

Q. But did either Mr. Shreider or Mr. Rayzor have any power to make any agreement binding upon the Southern Steamship Company?

A. No.

By MR. CASTIELLO:

Q. Did you ever, at any time, instruct Mr. Rayzor or Mr. Shreider that they could not make any agreements?

A. We told them not to make any agreements down there.

Q. When did you tell them this?

A. That particular evening.

Q. In the telephone conversation?

A. Yes.

Q. Why didn't you tell me that when you testified about what took place in the telephone conversation?

A. I don't know that you brought that question up.

Q. Well, I asked you to tell me substantially what the conversation was, and you considered authorization an important matter in the telephone conversation, didn't you? Didn't you, Mr. Sherry?

A. It sounds important now, but I just didn't think to mention it.

MR. CASTIELLO: That's all.

TRIAL EXAMINER SEAGLE: Do you have any further questions?

MR. CHILDS. No, sir.

TRIAL EXAMINER SEAGLE: Mr. Sherry, you say these men down in Houston, Texas, namely, Shreider and Rayzor, were not authorized to make any agreement?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Is that your testimony?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Do you mean by that, they were not normally authorized?

THE WITNESS: They had no authority, I mean, to make any agreements down there.

TRIAL EXAMINER SEAGLE: You have authority, do you not?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Consequently, you also have authority to delegate that authority to any person——

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE (continuing): —whom you may select, isn't that true?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: There was nothing to prevent you from giving authority to Mr. Shreider or Mr. Rayzor, or both, to make an agreement, isn't that true?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: Isn't that one of the reasons they telephoned to you?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: To see if they couldn't get you to give them authority?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You recall the testimony of the Captain, that he heard something said to the effect that they didn't want to make an agreement because they didn't know it would be binding, and I suppose, for that reason, they phoned you, isn't that true?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Did they ask you for authority?

THE WITNESS: No, they didn't ask for authority.

TRIAL EXAMINER SEAGLE: Did you hear the Captain's testimony, that they were doubtful as to whether they had authority?

THE WITNESS: That they were doubtful?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: I don't recall the Captain saying that.

TRIAL EXAMINER SEAGLE: Didn't they discuss with you at all the question of whether it would be all right for them to make some agreement?

THE WITNESS: They told me that Rayzor would discuss it with Mr. Mandell the next day, and that Mr. Mandell would release the boat, pending a discussion of a day or so following, about issuing passes to these men.

TRIAL EXAMINER SEAGLE: But they were to discuss the possibility of arriving at some agreement, were they not?

THE WITNESS: They had no authority for our office, whether they discussed anything about arriving at an agreement.

TRIAL EXAMINER SEAGLE: Didn't they at least have authority to discuss the terms of an agreement?

THE WITNESS: They were going to discuss, the following day, or the next day, Mandell and Mr. Rayzor, about issuing passes, and leaving these men go aboard our boats.

TRIAL EXAMINER SEAGLE: They were authorized to do that, weren't they?

THE WITNESS: We gave——

TRIAL EXAMINER SEAGLE: Will you please answer my question?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: If they were going to discuss that, they were authorized to do that, they told you they were going to do that?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And you approved of their doing that?

THE WITNESS: I didn't tell them we approved of it, or didn't approve of it.

TRIAL EXAMINER SEAGLE: Didn't you approve of their discussing it?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: That is my question.

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You approved of that much?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: To that extent, you delegated authority to them to discuss this problem?

THE WITNESS: That's right.

By MR. CHILDS:

Q. In other words, you delegated authority to negotiate, did you, to enter into negotiations?

A. They could discuss it the day following, yes.

Q. Did you give them authority to make any agreement following negotiations?

A. We gave them no authority to make any agreement.

Q. Did you tell them not to make any agreement?

A. That is correct.

TRIAL EXAMINER SEAGLE: Do you mean to say to us you told them definitely they were not to make any agreement?

THE WITNESS: They were not given any authority to make any agreement on it. They were to discuss it.

TRIAL EXAMINER SEAGLE: What were they to do down there in Houston? Go through empty motions?

MR. MCKAIG: They were to discuss it.

THE WITNESS: They were to discuss it. They were to agree on an agreement that we would agree on up here.

TRIAL EXAMINER SEAGLE: They were to make a preliminary agreement, isn't that true, subject to your ratification?

THE WITNESS: They were to discuss a preliminary agreement, or whatever you want to call it, they were to discuss it down there.

TRIAL EXAMINER SEAGLE: And they were authorized to make such a preliminary agreement, subject to ratification by your office, isn't that true?

THE WITNESS: They were given permission by us to discuss it a day or so following, and that was the only agreement I had. I understood from Mr. Rayzor that they were to discuss it in a day or so, and Mr. Mandell was ready to release the men.

TRIAL EXAMINER SEAGLE: Were they given authority merely to talk about it, or to arrive at some tentative agreement, subject to your approval?

THE WITNESS: To talk about it, and the final agreement would be made up here.

TRIAL EXAMINER SEAGLE: They were just to talk?

THE WITNESS: That is correct. They had no authority down there to make any binding agreement.

TRIAL EXAMINER SEAGLE: And that is all that was promised to Mr. Mandell, as representative of the union?

THE WITNESS: That's all.

TRIAL EXAMINER SEAGLE: That you would talk?

THE WITNESS: That's all.

TRIAL EXAMINER SEAGLE: And on that understanding, it is your testimony that the strikers went back to work?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: Did you ever receive any subsequent report as to what they had talked about?

THE WITNESS: No. We received a report that there was nothing more of discussion on it. There was nothing binding. We received a report from Mr. Rayzor that there was nothing binding between he and Mr. Mandell, and there was no authority they had to make anything binding.

TRIAL EXAMINER SEAGLE: Did you tell either Mr. Shreider or Mr. Rayzor that they were not to agree to giving passes to the union?

THE WITNESS: Did we tell them not to agree?

TRIAL EXAMINER SEAGLE: Yes, over the telephone.

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You told them they were not to give passes to the union?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: That had been your position all along?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: And was your position at that time?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: And you had no intention of altering it?

THE WITNESS: No, we didn't.

TRIAL EXAMINER SEAGLE: What were they to talk about?

THE WITNESS: Well, they were to discuss that, that was one of the things they were going to discuss, but not make a final agreement.

TRIAL EXAMINER SEAGLE: But you had already made up your mind that you would not give them the passes?

THE WITNESS: We were not of the frame of mind of giving it at that time, and have never changed our mind on it since.

TRIAL EXAMINER SEAGLE: You had no intention of changing your mind about it then?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: You nevertheless told them to tell the union delegates that you were going to discuss this question of the possibility of arriving at some agreement?

THE WITNESS: I didn't tell them that. They told me that they were getting together——

TRIAL EXAMINER SEAGEL: That is what they were authorized to do?

THE WITNESS (continuing): —that they were getting together in a few days, and would discuss this thing.

TRIAL EXAMINER SEAGLE: Didn't you just tell me a few minutes ago that is what they were authorized to do?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: My statement is correct, isn't it?

THE WITNESS: To that extent, yes.

TRIAL EXAMINER SEAGLE: That's all.

By MR. CASTIELLO:

Q. Did you communicate with your attorneys, either through your attorney here, or personally, either by telephone or by wire or by any other method, after you had this telephone conversation of July 18th, and after you received Respondent's Exhibit No. 8?

A. We discussed it with our attorney after that, yes.

Q. I am asking you whether or not you communicated with the Houston office, either to Mr. Shreider or to Mr. Rayzor, concerning this agreement, after your telephone conversation of July 18th?

A. I think we did, yes.

Q. In what manner did you communicate with your representative in Houston?

A. Why, I guess we had some writing, I imagine, about what was discussed down there.

MR. CHILDS: May I clear this a bit?

By MR. CHILDS:

Q. Isn't it a fact you took the matter up with our firm, and that we had some conferences with Mr. Rayzor?

A. That's right.

MR. CASTIELLO: That is what I asked.

By MR. CASTIELLO:

Q. Do you know what your attorneys in Philadelphia had to say to Mr. Rayzor?

MR. CHILDS: I object to that, as calling for a communication between a client and counsel.

TRIAL EXAMINER SEAGLE: The hearing is recessed for a few minutes.

(A short recess was thereupon taken.)

MR. CHILDS: I press the objection, Mr. Examiner.

MR. CASTIELLO: May I state that the privilege, Mr. Examiner, is that of a client, not the attorney?

MR. CHILDS: That is correct.

MR. CASTIELLO: If the client wishes to waive it, it may be done.

TRIAL EXAMINER SEAGLE: Suppose we ask Mr. Sherry.

Do you wish to tell us about this matter?

THE WITNESS: I will leave that in the hands of our attorney.

TRIAL EXAMINER SEAGLE: What do you mean by that? Do you want Mr. Childs to decide for you whether to assert this privilege, or do you want to consult with him privately? If you wish to do so, you may.

MR. CHILDS: Yes, that would perhaps be best.

(Short interruption.)

TRIAL EXAMINER SEAGLE: Mr. Sherry, have you decided whether you want to answer the question?

MR. MCKAIG: May the question be read?

(Question read by the reporter.)

TRIAL EXAMINER SEAGLE: Do you want to tell us that?

THE WITNESS: No, I would rather not quote that. That is confidential.

By MR. CASTIELLO:

Q. That is a confidential matter? Certainly you wish to give the Board all the facts in this case, so that it might decide properly what its findings should be?

MR. CHILDS: I object to that question, on the grounds that a client's claiming of his privilege to not disclose confidential communications with his attorney cannot be used as the basis for a question of that kind.

TRIAL EXAMINER SEAGLE: The objection is sustained.

But I do want to ask you this, now, Mr. Childs: Is it your intention, if there should be a session in Houston, Texas, to call Mr. Rayzor as a witness?

MR. CHILDS: That is my intention.

TRIAL EXAMINER SEAGLE: For what purpose will he be called? Won't he be called to testify to the same matter?

MR. CHILDS: Let me say what is apparently irrelevant, but I think you will see the relevancy of it, I would not bring in this question of any negotiations that took place down in Houston, were it not for the fact that there has been testimony here, of an entirely hearsay character, as to the understanding reached down at Houston.

As long as the testimony is admitted, unless it is stricken out, then, in view of the fact that the negotiations, the conversations of July 18th were carried on

principally by Mr. Rayzor, I would feel that I should take his testimony to show that no such agreement was made.

So, in answer to your question on the present state of the record, and on this present ruling, I do intend to take the testimony of Mr. Rayzor on the question of whether or not an agreement was arrived at in Houston on July 18, 1938, and as to no other question. I consider it just like this: As a rule, for instance, counsel should not testify in a case, but, when you get a situation where there is only one witness who knows about a particular transaction, in this case a conversation between two attorneys, of necessity the attorney should testify.

MR. CASTIELLO: We have no objection to attorneys testifying. That has been my experience with the Board.

Perhaps you could enlighten Mr. Childs on that.

TRIAL EXAMINER SEAGLE: Certainly there is no legal bar to an attorney testifying.

MR. CHILDS: My difficulty is getting into a collateral investigation. In other words, I do not think it proper so long as the client claims the privilege, that a door should be opened that will allow the Board to go into my private office and discuss conversations I have been having with this client over the last year and a half.

MR. CASTIELLO: In the event we do have a Houston session, are we to understand that the privilege now claimed by Mr. Sherry as to the conversation you had with Mr. Rayzor will necessarily affect Mr. Rayzor's testifying on the same conversation he had with you here?

MR. CHILDS: I think we will have to let that develop.

I would suppose that the only testimony that was desired from Mr. Rayzor would be simply testimony as to what occurred at Houston on that particular day. I see no reason for going into events subsequent to that day.

MR. CASTIELLO: The events certainly concerned the agreement or alleged agreement that was arrived at terminating the strike.

MR. CHILDS: We claim that that strike was terminated without any agreement being arrived at, which I do not think is essentially different from what the Board's own exhibit here indicates.

MR. MCKAIG: As I observed this morning, I don't think it makes any difference, as a matter of fact.

TRIAL EXAMINER SEAGLE: The question now is this, whether either Mr. Rayzor personally, or Mr. Rayzor through you intends to assert an attorney's privilege with reference to any of these transactions. If he does, it may be useless to go to Texas to take the testimony. In that case, I would like to know it now.

MR. MCKAIG: It is certainly our present thought that Mr. Rayzor should testify as to the negotiations that were had in Houston throughout the day of the 18th of July, and the means by which the men went back to work, what happened.

TRIAL EXAMINER SEAGLE: Of course, that would necessarily include testimony as to his contact with the office here, either through conversation with Mr. Sherry, or through conversations with either of you gentlemen.

What I want is a definite understanding that there is going to be no assertion or any claim of privilege in connection with that testimony.

MR. MCKAIG: I don't think there will be, with reference to relevant matter.

MR. CHILDS: May I suggest, your Honor, that in view of the fact it is proposed to have a hearing in this case, I understand tomorrow, that we defer any response to that query until tomorrow?

TRIAL EXAMINER SEAGLE: You certainly may do so, but I shall ask you to make a definite statement on that subject tomorrow.

MR. MCKAIG: Have you anything further?

MR. CASTIELLO: No, I guess that's all.

TRIAL EXAMINER SEAGLE: Was there any definite understanding as to how long these conversations between Mr. Mandell and Mr. Rayzor and the local agent were to continue? Was any definite time limit fixed for them?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: I take it, then, from that, that they might have lasted for several weeks, the negotiations?

THE WITNESS: There was no definite time.

TRIAL EXAMINER SEAGLE: If there was no definite time, they might have continued for a week or two?

THE WITNESS: They might, yes.

TRIAL EXAMINER SEAGLE: That being the case, will you explain to me why it is that you approved the discharge of these five members of the crew?

THE WITNESS: We approved that because we were requested by the Master, because of the inefficiency and the other things, of these men.

TRIAL EXAMINER SEAGLE: But for all you knew, these conversations might still be continuing in Texas?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: Didn't it occur to you that to discharge five of the men who had gone on strike while the conversations were continuing might jeopardize their being carried to any successful conclusion?

THE WITNESS: I didn't think that would seriously interfere with the discussion.

TRIAL EXAMINER SEAGLE: Did you give the matter any thought at all?

THE WITNESS: No definite thought, no.

TRIAL EXAMINER SEAGLE: You didn't think about that at all?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: That's all.

In view of the fact that Mr. Lustig will not be available until sometime tomorrow afternoon, and counsel wish to discuss the possibility of making a certain agreement, I shall adjourn the hearing until 1:00 p. m. tomorrow.

The hearing is adjourned until 1:00 p. m. tomorrow.

(Whereupon, at 4:25 o'clock p. m., Thursday, December 22d, 1938, the hearing was adjourned to 1:00 o'clock p. m., Friday, December 23d, 1938.)

(Docketed January 3, 1939.)

Room 1432, Bankers Securities Building,
Walnut and Juniper Streets,
Philadelphia, Pennsylvania,
Friday, December 23rd, 1938.

The above-entitled matter came on for hearing, pursuant to adjournment, at 1 o'clock p. m.

Before: WILLIAM SEAGLE, *Trial Examiner*.

Appearances as before.

PROCEEDINGS.

TRIAL EXAMINER SEAGLE: The hearing will come to order.

Have you produced, Mr. Childs, the copy of the telegram that was offered late yesterday afternoon?

MR. CHILDS: Since the hearing yesterday, I have obtained from the down-town office of the Postal Telegraph Company a copy of the telegram which is Respondent's Exhibit No. 8.

Some question was raised yesterday as to whether Respondent's Exhibit 8 was the original or a copy of a telegram, and the copy which I now produce is a copy made yesterday by the Postal Telegraph Company from the original telegram in its files.

I also have written a letter to the Board, stating that I personally telephoned G. R. Rosenfeld, Credit Manager of the Postal Telegraph Company, and he told me that the copy of the telegram which I now have in my hand was made by him from the original telegram in his possession.

Under those circumstances, I offer this copy in lieu of Respondent's Exhibit 8, and I also offer my letter to the Board, to which I have referred.

TRIAL EXAMINER SEAGLE: May I suggest that this copy be compared with the one that was offered yesterday, to see whether they are identical? If they are, I would suggest that you just allow the one introduced yesterday to stay.

MR. CHILDS: I might state, for the information of the Examiner, that according to my recollection, the telegram, Respondent's Exhibit 8, offered in evidence yesterday, was dated as of July 19th, and I think the discrepancy is due to the fact that the copy referred to yesterday was delivered through the uptown office of the Postal Telegraph Company.

TRIAL EXAMINER SEAGLE: The dates, then, do vary?

MR. CHILDS: The messages are the same.

TRIAL EXAMINER SEAGLE: Then, suppose you offer this telegram, and ask to withdraw the other?

MR. CHILDS: Under the circumstances, I offer this copy, which I have just referred to, in lieu of the copy of the telegram which was offered yesterday.

TRIAL EXAMINER SEAGLE: I take it, you want to withdraw the copy?

MR. CHILDS: I would ask leave to withdraw the copy which was offered yesterday.

TRIAL EXAMINER SEAGLE: Is there any objection to that?

MR. CASTIELLO: No objection.

TRIAL EXAMINER SEAGLE: There being no objection, the copy of the telegram sent by L. A. Shreider, Jr., to Charles F. Sherry, will be admitted in evidence as Respondent's Exhibit 8, and the copy of the telegram which was offered and admitted yesterday may be withdrawn.

MR. MCKAIG: May I add, the exhibits being identical, except as to date?

TRIAL EXAMINER SEAGLE: The record should show that both copies of the telegram are identical except as to date.

(Whereupon, the document above referred to was accordingly substituted and received in evidence as "Respondent's Exhibit No. 8.")

TRIAL EXAMINER SEAGLE: Did you offer this letter?

MR. CHILDS: I also offered the letter.

TRIAL EXAMINER SEAGLE: The letter, which was offered by Mr. Childs, in connection with this telegram, which is dated December 23, 1938, and addressed by Adams, Childs, McKaig & Lukens to the National Labor Relations Board, will be admitted in evidence as Respondent's Exhibit No. 9.

(Thereupon, the document above referred to was marked as "Respondent's Exhibit No. 9," and was received in evidence.)

MR. CHILDS: I might add, Mr. Examiner, that the copy of the telegram which was withdrawn bears the mark "Houston, Texas, 18 904 P".

TRIAL EXAMINER SEAGLE: Meaning July——

MR. CHILDS: Eighteenth.

TRIAL EXAMINER SEAGLE: That seems to be July 19th.

MR. CHILDS: That is the date it was apparently received, but they also have that.

TRIAL EXAMINER SEAGLE: Oh, the date sent?

MR. CHILDS: Yes.

TRIAL EXAMINER SEAGLE: It appears that the copy of the telegram, which has been withdrawn, bore the date July 18, 1938.

MR. CHILDS: Yes.

TRIAL EXAMINER SEAGLE: As the date on which the telegram was sent?

MR. CHILDS: Yes.

TRIAL EXAMINER SEAGLE: Off the record.

(Discussion outside the record.)

TRIAL EXAMINER SEAGLE: There are a number of additional questions which I should like to ask Mr. Sherry.

CHARLES F. SHERRY, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

TRIAL EXAMINER SEAGLE: The home port of your vessels is Philadelphia, Pennsylvania, is it not?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: What is your practice, when it becomes necessary to replace a part of the crew when a vessel is away from the home port?

THE WITNESS: Away from the home port?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: If it was necessary to get a man at Houston, Texas, they would get a man down there.

TRIAL EXAMINER SEAGLE: Does your vessel stop at any other port than Houston, Texas?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: I take it there have been cases when a seaman was taken sick or left the vessel for some reason, and you had to replace him?

THE WITNESS: That is correct, but if one of our men leaves, it is very often that we have one in a lower position that we can move up to that position above.

Now, if that was in the fire room, we wouldn't possibly have to get anyone at an outside port, because we are carrying two wipers that we don't have to carry.

TRIAL EXAMINER SEAGLE: But have there been instances of hiring new men?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: At Houston?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Who has authority in Houston to hire new men?

THE WITNESS: The Captain or agent down there, either one of them.

TRIAL EXAMINER SEAGLE: Either one of them may hire a new man?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: I take it that when your vessels are at Philadelphia, men are hired through your office?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: And you do the hiring?

THE WITNESS: Yes. That is, we possibly don't do the exact hiring. We will see a man and send him down. If our engineer should want a man, and that man is the required man that we want for that position, whether an able seaman or a fireman, we would send the man down with a note, "The bearer, John Brown, is sent to you as fireman, if he meets with your approval," or something like that.

TRIAL EXAMINER SEAGLE: But the men are hired through your office in the first instance?

THE WITNESS: In that way.

TRIAL EXAMINER SEAGLE: In that way?

THE WITNESS: That is, the man comes into our office, and we send him to the boat, or the engineer, or the deck department.

MR. CHILDS: I think a more correct statement is, they are secured through his office, but actually hired by the first mate, or the chief engineer.

TRIAL EXAMINER SEAGLE: Through the captain?

MR. CHILDS: Through the captain.

TRIAL EXAMINER SEAGLE: I take it the captain would formally have to approve it, wouldn't he?

THE WITNESS: No. A man would be looking for a position, and he would come into our office, and if we needed a fireman, or able seaman, we would send him down with a note to the boat, "Subject to your approval," leaving it entirely up to the man in that department that is looking for a man, as to whether, after he looks his papers over, and sees if he has worked on a boat for six months, or a year and six months, whether or not he is the man he wants.

TRIAL EXAMINER SEAGLE: But the officer of the ship, after he decided whether or not this man was suitable for the job, would not have to consult your office again?

THE WITNESS: He would tell us that he is filled up now, so we wouldn't be sending anybody else down, if he accepted that man.

TRIAL EXAMINER SEAGLE: In other words, he would notify you that the man was acceptable, if he had hired him, is that the situation?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You say that down in Houston, either the captain or the local agent would act in the same way?

THE WITNESS: If we were looking for a man down there, if the captain was around, the deck department might tell the captain, or the engineer might tell the captain, "We have a man." If the captain wasn't around, he would tell Mr. Shreider, and, if anyone comes around the office, practically the same procedure would be conducted, I would think, down there.

TRIAL EXAMINER SEAGLE: They do have authority, then, to hire men, when necessary, at Houston?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: I take it that, down at Houston, the captain or the local agent, or both of them, would have authority to also deal with any cases of infractions of discipline that may occur while the vessel is in port?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: In other words, if the captain fired a man down there, and then, next day, decided to change his mind and take him back, that would be perfectly all right?

THE WITNESS: He would have to do that firing of that man through the shipping commissioner. He would have to be careful about the firing of a man, because of the shipping articles.

TRIAL EXAMINER SEAGLE: But he would have authority to take care of the situation?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: In whatever manner is permitted by law?

THE WITNESS: He is in charge of his boat.

TRIAL EXAMINER SEAGLE: You said yesterday, in testifying in connection with whatever agreement was made down there at Houston, Texas, that neither Mr. Shreider nor Mr. Rayzor would have authority to make any agreement?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: In giving that testimony, did you mean that these gentlemen would not have had authority to commit the company to allow the delegates to go on board the ship?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: Did you mean to indicate, in giving that testimony, that Mr. Shreider, or the captain, would not have had authority to take these men who had gone on strike on July 18th back, and to assure them that they would not be discriminated against?

THE WITNESS: Did the captain have authority?

TRIAL EXAMINER SEAGLE: Would the captain or local agent have authority to take the men back who had gone on strike, and give them the assurance that they would not be discriminated against?

To make my question perfectly clear, I should say that I am taking this merely as a hypothetical case, and I am not assuming that such assurance was given.

I want to know merely whether the captain or the local agent could have given such assurance.

THE WITNESS: No, they wouldn't. I wouldn't say they had that authority.

TRIAL EXAMINER SEAGLE: Have you ever had that problem before?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: What?

THE WITNESS: No, I don't believe we have.

TRIAL EXAMINER SEAGLE: Then you cannot be in a position to say that there is any definite rule about it, can you?

THE WITNESS: No, but they would not commit themselves to that extent.

TRIAL EXAMINER SEAGLE: But they are in charge of hiring and firing down there, aren't they?

THE WITNESS: They are in charge, yes; but to commit themselves as to whether or not, at the termination of that trip, as I understand your question, whether or not they would continue on in the service, they wouldn't have that authority.

That was your question, is that correct?

TRIAL EXAMINER SEAGLE: Yes.

THE WITNESS: Well, they would not have that authority, to commit themselves.

TRIAL EXAMINER SEAGLE: But the captain does have authority to discharge a man?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: As a matter of fact, he did in this case decide to discharge the five men who were let go on July 25th?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: You have also told me that the captain would have authority to hire a man in Houston, Texas?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And that the same thing would be true of the local agent?

THE WITNESS: Right.

TRIAL EXAMINER SEAGLE: Consequently, wouldn't the captain or the local agent have authority to forgive a man for past misdeeds, if he regarded them as such?

THE WITNESS: Well, that would depend, I think, on just what that misdeed was, and I don't think the captain would commit himself, if it was serious enough that he would take that into his hands, to make a guarantee to a man.

TRIAL EXAMINER SEAGLE: What you are giving me now is your opinion, is it not?

THE WITNESS: Well, the captain, I would say, would be at fault, and we wouldn't stand in back of any commitment that would be made where the offense was serious enough; and the captain wouldn't do that.

TRIAL EXAMINER SEAGLE: Even after the ship arrived in Philadelphia, if the captain had made no recommendation to you that any of the men on board the "Fort Worth" who had gone on strike on July 18th be discharged, would you have taken any action?

THE WITNESS: I would say no.

TRIAL EXAMINER SEAGLE: Then, if the captain or the local agent had given such an assurance to the men, wouldn't they be acting perfectly within the scope of their authority?

THE WITNESS: They would be not acting in the scope of their authority. If the offenses were slight, I would say yes, but the offenses, as they are shown here, I would say they would be out of authority to commit themselves to that extent.

TRIAL EXAMINER SEAGLE: But you have also testified that you have never had a similar situation?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: It follows from that, that there could be no settled rule about it?

THE WITNESS: No, no settled rule, only the rule of——

TRIAL EXAMINER SEAGLE: No, please just answer my question.

It follows, does it not, that there was no settled rule?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: And that the captain had received no instructions one way or another as to what his authority was under such circumstances?

THE WITNESS: We expect the captain to use intelligence and good judgment, and anything that is serious enough, we possibly would find fault with that captain, that he committed his company when he had no authority to commit, and the captain, knowing that, would not make that commitment, only on trifling things.

Now, we would consider this a little more than trifling, if he had, from what all the evidence that has been produced here shows, committed the company, and we would certainly challenge him for committing the company in a case like this.

And, with that thought in mind, I don't believe there is any of our captains that would use any authority in that way, and we would be disappointed in them if they did.

TRIAL EXAMINER SEAGLE: What you are saying is this, is it not: That if the captain had exercised authority in such a situation, it would not have been very wisely exercised?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: But you cannot say that the captain had no authority, if he had never been given instructions that he must not do a thing like that?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: And you do say that the captain, in general, did have authority to take care, both of hiring and firing?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: Is that correct?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: That's all.

MR. CHILDS: Just one question.

RE-DIRECT EXAMINATION.

By MR. CHILDS:

Q. Mr. Sherry, was this telegram, Respondent's Exhibit 8, received by you on the morning of July 19th, 1938?

A. July 19th?

Q. Yes.

A. Yes.

Q. Referring to the series of questions put to you by his Honor, the Examiner, I ask you whether in this case on July 18, 1938, you gave instructions, by phone, that no agreement was to be made on behalf of the company, relating to the conduct of these men?

MR. LUSTIG: I object to that.

MR. CASTIELLO: It is apparently leading.

MR. LUSTIG: Of course, the objection is taken a little late, but it is still obvious that the question is highly leading in form.

MR. CHILDS: I will rephrase it.

MR. LUSTIG: There is no need to do that now, sir.

TRIAL EXAMINER SEAGLE: May I suggest this, off the record.

(Discussion outside the record.)

MR. CHILDS: I will withdraw the question.

No further questions.

MR. LUSTIG: May I ask just one question?

MR. CHILDS: I think, in view of the series of questions asked by the Examiner, and the very thorough inquiry into this matter yesterday, that counsel for the union should not have a chance to further cross-examine this witness.

MR. LUSTIG: Except I want to say, Mr. Examiner, it appears from Mr. Sherry's testimony that there seems to be a division of authority as to the selection of the men; in other words, the hiring, the question as to who has final word.

I don't think that is very clear from the testimony of Mr. Sherry.

TRIAL EXAMINER SEAGLE: You were not here yesterday, Mr. Lustig, and there was some testimony taken as to that, and, while I do not want to take the position formally that I bar you from asking any questions now, I doubt whether you could profitably engage in this examination without knowing what went on yesterday.

MR. LUSTIG: I will defer to your Honor's wishes.

TRIAL EXAMINER SEAGLE: I do want to ask this one additional question:

In your telephone conversations with Mr. Shreider and with Mr. Rayzor on July 18th, is it not true that they discussed with you the question of issuing passes to the delegates?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And didn't they suggest that to you as a proper subject for an agreement?

THE WITNESS: Yes.

TRIAL EXAMINER SEAGLE: And did they suggest anything else to you as a subject of discussion?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: They said nothing to you about hiring or rehiring the crew, one way or the other?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Or giving them any assurances of any kind?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: They did not discuss that question with you?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: Over the telephone?

THE WITNESS: No.

By MR. CHILDS:

Q. Mr. Sherry, was anything said in that conversation about either Mr. Shreider or Mr. Rayzor making an agreement on behalf of the Southern Steamship Company?

A. Only the question that Mr. Mandell and Mr. Rayzor were going to get together the following day, and we let them know that they would make no agreements, that any agreements that were made were with our office up here.

MR. CHILDS: All right.

TRIAL EXAMINER SEAGLE: But the agreement they were to discuss involved the question of issuing passes?

THE WITNESS: That is correct.

TRIAL EXAMINER SEAGLE: That is what they told you over the telephone?

THE WITNESS: Yes.

By MR. CHILDS:

Q. And did you say whether or not they had authority to make any such agreements?

A. They had no authority to make any such agreements.

Q. Did you tell them that?

A. Yes.

MR. CHILDS: No further questions.

RE-CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. Then you put your agent in Texas in the position where he was going to negotiate to end the strike, and present himself as having authority, and yet, he didn't have authority?

MR. CHILDS: I object to the form of that question, in that he says, "to present himself as having authority," which I don't think the evidence bears out.

TRIAL EXAMINER SEAGLE: The objection is sustained.

By MR. CASTIELLO:

Q. You knew that your agent was going to get together with Mr. Mandell of the union, did you not?

MR. CHILDS: I object to the term "get together", as not being sufficiently definite.

MR. CASTIELLO: I am using the witness' term.

TRIAL EXAMINER SEAGLE: The objection is overruled.

MR. CASTIELLO: Will you read the question, please?

(Question read.)

A. I knew there was to be a meeting between the two of them within the next day or two, yes.

By Mr. Castiello:

Q. For what purpose?

A. The question about issuing passes to the men to go aboard our boats.

Q. Wasn't there anything else discussed?

A. That seemed to be the issue.

Q. And did you give your agent authority to discuss passes?

A. We didn't tell them not to have this meeting, but we did let them know that they were to take no authority down there, that we would handle the situation up here, that they were to keep impressing our men down there with our disappointment in their not living up to their contract, signed on in front of the local shipping commissioner, and to bring that point very clear to them, to honor their contract, and all other things we would take care of up here.

Q. You say that you expressly stated that they had no authority——

A. Yes.

Q. (Continuing.) —to deal for you in Texas?

A. That is correct.

Q. How did you expect them to effectually deal with the union, and arrive at an agreement which would settle this affair?

A. It seemed that Mr. Mandell—I don't know whether he was going to go along with Mr. Rayzor, or what, we don't know just how they were agreeing on it down there, but anyhow, we gave them no authority to act as authority for the company down there.

Q. Do you know whether or not your agents presented themselves as having authority to negotiate the settlement of this dispute?

A. I would say they didn't.

By Mr. Childs:

Q. They didn't, or did?

A. I would say I don't believe they did.

Trial Examiner Seagle: It seems to me that is a question which the witness cannot possibly answer, because he was not in Houston, Texas; unless he received information over the telephone.

Did you have any further telephone conversation with either Mr. Shreider——

The Witness: No.

Trial Examiner Seagle (continuing): --or Mr. Rayzor, apart from the ones you have already testified about?

The Witness: No.

By Mr. Castiello:

Q. Then you don't know whether your local agent and your local attorney did present themselves as having authority?

Mr. Childs: Before he answers that, I want to object to it, on the ground it is irrelevant. It makes no difference what authority they may have purported to have. The question is, what authority they had.

Mr. Castiello: It seems to me it goes to the bona fides of the company.

Trial Examiner Seagle: Objection overruled.

Mr. Castiello: May I repeat that, that it goes to the bona fides of this company, to state at this time there was no authority on the part of their local agent and local attorney to negotiate the settlement of this strike, and yet have their local agents probably present themselves as having that authority.

Mr. Childs: The "probably present themselves" is hypothetical.

MR. MCKAIG: Off the record; it seems to me there is a great deal of misunderstanding on a comparatively simple situation. It seems to me it has been fully testified about that the people down in Texas were authorized to negotiate but not to close without specific approval of the home office. That is the sum and substance of it.

MR. CASTIELLO: That varies from the witness' testimony.

TRIAL EXAMINER SEAGLE: I do not see that any purpose will be served by prolonging the argument. Answer the question.

Will you read the question?

(Question read.)

A. I would say I don't know. They had no authority from the Philadelphia office to represent the company.

TRIAL EXAMINER SEAGLE: Any further questions?

MR. CASTIELLO: That's all.

TRIAL EXAMINER SEAGLE: The witness is excused.

MR. MCKAIG: Just one question.

RE-DIRECT EXAMINATION.

By MR. MCKAIG:

Q. When you say "represent", you mean "bind", do you not?

A. That is correct.

MR. CASTIELLO: I move to strike that out. That is so apparently leading, Mr. Examiner.

TRIAL EXAMINER SEAGLE: Motion denied.

Any further questions?

MR. CASTIELLO: No, sir.

MR. CHILDS: None.

(Witness excused.)

TRIAL EXAMINER SEAGLE: Mr. Childs, have you decided to make any statement with respect to the question I asked you yesterday? I am referring to the question whether you would interpose any claim of privilege in connection with any part of the testimony of Mr. Rayzor in Houston, Texas?

MR. CHILDS: Mr. Examiner, very respectfully the company reserves its right with respect to that matter.

I might also add that in view of the whole record, the Respondent, Southern Steamship Company, does not think it necessary that testimony be taken at Houston, but of course, if the testimony is taken, why, the Respondent will reserve the right to call such witnesses as it deems suitable.

TRIAL EXAMINER SEAGLE: Well, do I understand that counsel for the union does desire to have such testimony taken?

MR. LUSTIG: We certainly desire to have the testimony taken of all available witnesses down in Houston.

TRIAL EXAMINER SEAGLE: What is the position of counsel for the Board?

MR. CASTIELLO: The position of counsel for the Board is that although the theory of the Board's case relative to the discharges of July 25th is not wholly dependent on the alleged agreement ending the strike of July 18th, and particularly that part of the alleged agreement relative to the continued employment of the strikers despite their actions on July 18th, yet it seems to me to shed light on the bona fides of the company relative to the discharges of July 25th.

TRIAL EXAMINER SEAGLE: Do I understand from that, then, that you do wish to have the testimony of the witnesses at Houston taken?

MR. CASTIELLO: I do.

TRIAL EXAMINER SEAGLE: I want to say this to you, Mr. Childs, that you are, of course, entirely within your rights in not making any admissions as to what objections you may take at Houston, Texas.

Perhaps I should also make it clear that, in asking you to make a commitment, I was not taking any definite position there. In other words, I don't want it to be assumed that I would either overrule or sustain any objection made on that ground. I think that would, of course, depend entirely upon the circumstances of the conversation, and the nature of the communication.

As you gentlemen know, we have taken the testimony of all those witnesses who could be made available here in Philadelphia, and it now appears from the statement of counsel that it is necessary to take the testimony of such witnesses as may be available in Houston, Texas, as to what happened in the course of the strike.

I am going to adjourn the hearing to some place in Houston, in the State of Texas, but I do not know, at the moment, yet, as to what particular place in Houston will be available for the purposes of the hearing, and I am going to ask you gentlemen if you will stipulate that the place at which the hearing will be resumed in Houston, Texas, may be communicated to you by telegram, on three days' notice.

MR. MCKAIG: We might have it on the Pier.

MR. CHILDS: We so stipulate.

MR. CASTIELLO: I so stipulate.

TRIAL EXAMINER SEAGLE: It is so stipulated by all parties.

The hearing is adjourned to 10 o'clock a. m., of January 9th, 1939, to be resumed at Houston, Texas, at such place as may be communicated to the parties by

telegram upon three days' notice. The hearing is adjourned in accordance with that stipulation.

In adjourning this hearing for the present, I want to take this opportunity of wishing all you gentlemen a merry Christmas, and a happy New Year.

MR. CASTIELLO: Thank you very much.

MR. CHILDS: All counsel join in extending reciprocally this greeting to the Examiner.

(Whereupon, at 1:45 o'clock p. m., Friday, December 23rd, 1938, the hearing was adjourned to 10 o'clock a. m., Monday, January 9th, 1939, in Houston, Texas, at such place in Houston, Texas, as may be communicated to the parties by telegram upon three days' notice.)

CERTIFICATE.

(Filed January 17, 1939.)

THIS IS TO CERTIFY that the attached proceedings before the NATIONAL LABOR RELATIONS BOARD (or Regional Labor Board for the Fourth District) in the matter of:

SOUTHERN STEAMSHIP COMPANY and NATIONAL MARITIME UNION OF AMERICA (Affiliated with the C.I.O.) Case No. IV-C-541, at Houston, Texas, January 9, 1939,

were had as therein appears, and that this is the original transcript thereof for the files of the Board.

DANIEL W. ROSS,
Official Reporter,
By HALL ETTER,
Field Reporter.

The United States District Court Room,
Federal Building, Houston, Texas,
Monday, January 9, 1939.

The above-entitled matter came on for hearing, pursuant to adjournment and telegraphic notice, at 10 o'clock a. m.

Before: WILLIAM SEAGLE, *Trial Examiner.*

Appearances as before.

PROCEEDINGS.

TRIAL EXAMINER SEAGLE: The hearing will come to order.

As some of you gentlemen know, the hearing in this case commenced on December 5 and was adjourned on December 23, 193 , with the understanding that it

would be resumed some place in Houston. It was stipulated by counsel at that time the place for the hearing was to be held might be communicated to the parties by telegram. I wish to ask the Board's counsel whether such telegram was sent.

MR. CASTIELLO: That telegram was transmitted. Mr. Examiner, as Board's Exhibit No. 8, I herewith submit copy of the telegram which was sent to the counsel for the Respondent at Philadelphia. I have shown this copy to counsel for the Respondent here in Houston, Mr. Brown, and he has no objection.

TRIAL EXAMINER SEAGLE: I understand, Mr. Brown, you are appearing here in this proceeding at Houston in place of Mr. Childs?

MR. BROWN: That is correct.

TRIAL EXAMINER SEAGLE: Of Philadelphia?

MR. BROWN: Yes, sir.

TRIAL EXAMINER SEAGLE: Do you have any objection to receiving this telegram?

MR. BROWN: None at all.

TRIAL EXAMINER SEAGLE: Do you acknowledge a copy of this telegram was received?

MR. BROWN: I couldn't say one way or another, but I know we were advised we would proceed this morning, and we have no objection to proceeding.

TRIAL EXAMINER SEAGLE: The telegram will be admitted as Board's Exhibit No. 8.

(Thereupon the document above referred to was marked as Board's Exhibit No. 8 for identification and received in evidence.)

TRIAL EXAMINER SEAGLE: Is the Union also represented by counsel today?

MR. MANDELL: Yes.

TRIAL EXAMINER SEAGLE: May I have a statement of your name for the record.

MR. MANDELL: A. J. Mandell.

TRIAL EXAMINER SEAGLE: Are you ready to proceed, Mr. Castiello?

MR. CASTIELLO: I am. Mr. Cunningham.

E. J. CUNNINGHAM, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Will you state your full name please?

A. E. J. Cunningham.

Q. How old are you, Mr. Cunningham?

A. Twenty-nine.

Q. Where do you live?

A. 7826 Avenue E, Houston.

Q. What is your occupation?

A. Seaman.

Q. Mr. Cunningham, were you ever in the employ of the National Maritime Union?

A. Yes, sir.

Q. In what capacity?

A. Delegate.

Q. When were you appointed or elected to that office?

A. In July, 1937.

Q. How long did you hold that office?

A. Until August, 1938.

Q. Mr. Cunningham, did there come a time when information was brought to your knowledge that the National Maritime Union was certified by the National Labor Re-

lations Board as the bargaining agency for the unlicensed personnel of the Southern Steamship Company?

A. Yes, sir.

Q. When did you first learn that?

A. The latter part of January, 1938.

Q. Having learned that, could you tell me what action you took as a representative of the Union, seeking to request collective bargaining conferences with the Respondent?

THE WITNESS: Would you mind stating that again?

(Question read.)

A. I called on Mr. Shreider, the local representative of the Southern Steamship Company, in Houston.

Q. When did you call on him?

A. The day that we received the communication stating that we had been certified by the Board.

Q. Now can you tell us approximately when you received that communication?

A. To the best of my recollection it was in the last week of January, 1938.

Q. And from whom did you receive the communication?

A. Well, we got the communication from headquarters, and we also saw a notice in the newspapers.

Q. From headquarters. Do you mean Union headquarters?

A. Union headquarters; yes, sir.

Q. You said you paid a call on Mr. Shreider?

A. Yes, sir.

Q. Was that a personal visit?

A. Yes, sir.

Q. Who is Mr. Shreider?

A. He is local representative of the Southern Steamship Company, is the information I have.

Q. Where did you see Mr. Shreider?

A. On the dock of the Southern Steamship Company.

Q. Here in Houston?

A. Here in Houston, yes.

Q. Will you relate what conversation took place?

A. I had a letter of introduction from the business agent of the National Maritime Union for the Port of Houston.

Q. Who is the business agent?

A. Robert Gurtov was at that time.

Q. Yes, sir.

A. This letter introduced me and informed Mr. Shreider that I had come for passes and to arrange a conference to work out an agreement to bargain collectively. That was what the conference was for.

Q. Did you take this letter with you down to the dock when you saw Mr. Shreider?

A. Yes, sir.

Q. And did you hand it to him?

A. I handed it to Mr. Shreider.

Q. Did you know Mr. Shreider?

A. I didn't know him prior to that. He was pointed out to me by some workmen there on the docks.

Q. How did you know you were speaking to Mr. Shreider?

A. I asked him if he was Mr. Shreider and he said yes, and I handed him the letter, introduced myself and also handed him the letter.

Q. Apart from the letter itself, did you say anything to him?

A. I told him what I was there for, that I had come for the passes and if possible to arrange this conference.

Q. Did you tell him why you came for the passes and why you were wanting to arrange a conference?

A. I told him we had been certified by the Board as the collective bargaining agent, and that is why I was there, to get the passes, and also, it was necessary to arrange a conference.

Q. What reply, if any, did Mr. Shreider make?

A. Mr. Shreider told me he did not have the authority to authorize any passes, or he did not have the authority to arrange a conference with us, that that had to be carried on by the home office in Philadelphia, and that he would communicate with them and as soon as he found out he would let us know.

Q. And with that, was the conversation over?

A. That was the end of the conversation; yes, sir.

Q. Did Mr. Shreider ever communicate with the Union here in Houston after your visit?

A. Not that I know of.

Q. Did he ever call the Union and advise your people what the position of the Philadelphia office was?

A. No, sir; not to my knowledge.

Q. Did Mr. Shreider at any time after that ever call the Union in reference to the Union's request for collective bargaining conferences?

A. Not to my knowledge; no, sir.

Q. Now directing your attention to July 18, 1938, did there occur anything on one of the vessels of the Southern Steamship Company docked here at Houston?

A. Yes, sir; on the "City of Fort Worth" there was a strike.

MR. BROWN: Your Honor, may I have the objection that Mr. Childs has been making throughout this testimony to the use of the term "strike." I understand of course it is being used here, in a sense, to describe the situation.

TRIAL EXAMINER SEAGLE: Well, of course I understand that the company objects to the use of the term "strike."

MR. BROWN: That is what Mr. Childs has been doing.

TRIAL EXAMINER SEAGLE: You will have an exception to the use of the term.

Q. Now, prior to July 18, can you tell the Examiner whether or not you, as an officer of the Union met with any of the members of the crew?

A. Yes, sir. I met with them prior to July 18 on two different occasions.

Q. When was the first occasion?

A. The first occasion was on July 16, Saturday, when a member of the crew came up to the Union Hall, and they had a talk with Gurtov, Mr. Jarvis and myself, and we arranged the meeting with the crew for the following day, which was Sunday, July 17.

Q. Do you remember who this member of the crew was who called on you?

A. No, sir; I don't remember.

Q. Who is Mr. Jarvis?

A. He was also a patrolman delegate for the National Maritime Union at that time.

TRIAL EXAMINER SEAGLE: When you speak of the crew are you speaking of the crew of the "Fort Worth".

THE WITNESS: Yes, sir; the unlicensed personnel.

Q. And when I refer to the Union, I mean the National Maritime Union. Now pursuant to the arrangements made on July 16, was there a meeting of the crew of the "Fort Worth" on Sunday, July 17?

A. Yes, sir.

Q. Where did the meeting take place?

A. In the Union Hall in Houston.

Q. Who was present there, of the agents or delegates of the Union?

A. Gurtov, the agent, myself as a patrolman, and Jarvis, the patrolman.

Q. You use the word "patrolman." Is that used in the same sense as shore delegate?

A. Yes, sir; it is the same thing.

Q. How many members of the crew, approximately, were present?

A. The best of my recollection, there must have been about fifteen there.

TRIAL EXAMINER SEAGLE: Did you say an agent was present?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Who was that?

THE WITNESS: The business agent of the Union.

Q. That is Mr. Gurtov?

A. Mr. Gurtov; yes, sir.

Q. Can you tell us what the purpose of the meeting was?

A. The purpose of the meeting was to find out what steps the Union had taken towards arranging for a conference to work out an agreement. The crew also wanted to know why we had not got passes and why we were not contacting those ships.

Q. And what did you reply to the crew?

MR. BROWN: I object to that as hearsay and self-serving, not made in the presence of any authorized representative of the respondent.

TRIAL EXAMINER SEAGLE: Is this testimony being offered to show how the strike came about?

MR. CASTIELLO: Yes, sir.

TRIAL EXAMINER SEAGLE: Well, it seems to me to be competent for that purpose. The objection will be overruled.

MR. BROWN: Let me have an exception. I want to ask one thing. I have not appeared before one of these labor hearings before. Is it customary, and is it required, to not only object but also to take an exception?

TRIAL EXAMINER SEAGLE: Well, I stated on the record in Philadelphia that whenever counsel made an

objection that he would be deemed automatically to have an exception. It is not necessary to specifically request an exception in each case.

THE WITNESS: What was the question?

(Question read.)

A. When the crew wanted to know why these things were not done, we gave them the facts in the case. We had tried to get this conference. We had also tried to get passes. Mr. Shreider had referred the matter to Philadelphia and we had not heard anything from them, and he had never notified us as to what action Philadelphia had taken, and we were just exactly like we were when we started.

Q. After having advised the crew, can you tell me what decisions and what plans were made to further the purposes of the union?

A. The crew decided at that meeting that the next morning at 8:00 o'clock they would contact the company representatives and if these passes and this conference was not arranged they would shut down steam on deck.

Q. Where were they going to contact the company representatives?

A. There on the dock.

Q. Where?

A. On the dock. The proper procedure in a case like that would be to go to see the master of the vessel and it would be up to the master to contact the agents of the company.

Q. And if the master was not present whom would you see?

A. The next officer in command, the mate.

Q. Were there any plans made at that time with reference to the safety of the ship?

A. Yes, sir.

Q. Can you tell us what plans were made?

A. Yes, sir. Those plans were that there would be steam kept on all the auxiliaries, that is, there would be a

fireman on watch and an oiler to see that the auxiliaries were properly lubricated. If the ship demanded it there would be an A. B. on the gangway to keep an eye on deck, to see there was no fire or anything. The steward's department was supposed to keep on with their regular duties, feeding, until such time as the master relieved the steward of his duty by taking his keys away from him and locking up the storeroom and the galley.

Q. Can you tell me whether or not the members of the crew took a strike vote at this meeting on July 17th?

A. Yes, sir.

Q. And what was the result of the vote?

A. The vote was unanimous to shut off steam the next morning at 8:00 o'clock. There wasn't a dissenting vote.

Q. Now you testified that the crew wanted the union delegates to have passes?

A. Yes, sir.

Q. Can you tell us whether or not you, or to your knowledge any of the other shore delegates, were able to get aboard the ship, the "Fort Worth," or any vessel of the Southern Steamship Company without passes?

A. When I first went to work for the union I was able to board one of those vessels, that was in July, 1937, without a pass. After that I was not allowed to get on the dock, much less the vessel.

Q. Do you recall which vessel you were able to board?

A. I don't recall; no, sir; but I think it was the "San Antonio."

Q. Is that a vessel of the Southern Steamship Company?

A. Southern Steamship Company; yes, sir.

Q. Now, you say after that time you were unable to board the ship, much less the dock?

A. Was unable to get on the dock, much less the ship.

Q. Can you explain that to us?

A. Well, these gunmen, I call them gunmen, but they are supposed to be special officers the Southern Steamship Company maintained down there on the docks.

Q. What about them?

A. They kept us off.

Q. In what manner would they keep you off?

A. Just tell us there was no room there on that dock for us, to get moving.

Q. Can you tell us whether that dock is a municipal dock or a dock owned by the Southern Steamship Company?

A. To the best of my knowledge it is a municipal dock. It is Dock No. 2, 3; I think they use 2 and 3 there, or 1, 2 and 3, but they are municipal docks, to the best of my knowledge.

Q. Before you were a shore delegate of the National Maritime Union did you have any difficulty going on the docks?

A. No, sir.

Q. May I ask you if I went down to that dock, or if someone not connected with the union went down, do you believe they could get on the dock?

MR. BROWN: That is an obvious conclusion, not based on any facts, and we object to it for that reason.

TRIAL EXAMINER SEAGLE: The objection is sustained.

MR. CASTIELLO: I will reframe the question.

Q. Can you tell us, Mr. Cunningham, whether you know of persons, or whether you have seen persons not connected with the N. M. U. as delegates or officials, have free access to the docks?

MR. BROWN: We object to that unless it is shown that he knows who these people are and the purpose they had for going on the docks, and any right they might have for being there.

TRIAL EXAMINER SEAGLE: The objection is overruled.

THE WITNESS: Do you want me to answer that question?

MR. CASTIELLO: Yes.

A. I know of numerous people who have gone on that dock, have free access to it there, some members of our own organization.

Q. Can you give us the names of some people?

A. Well, I would like to be a little more thorough there in that answer there. When a seaman is on the beach, if he is broke he usually contacts those ships to get a meal, and almost everybody on the beach down there has made one of those Southern Steamship Company ships at one time or another to go aboard to get a meal there.

Q. What do you mean "when they are on the beach"?

A. When they are unemployed. An unemployed seaman is classed as being on the beach. That is what we term it.

Q. Have you ever seen any of these unemployed seamen go on any of the ships of the Southern Steamship Company in the manner that you have just testified to?

A. I have been down on that dock myself and saw them go aboard; yes, sir.

Q. Can you tell me whether or not any of those unemployed seamen to your knowledge were ever stopped by any of these private officers, whom you say were in the employ of the company?

A. Occasionally they would be stopped; yes, sir.

Q Were they permitted to go on the docks?

A. They were permitted to go on the dock; yes, sir.

Q. Were they stopped when they went on the docks or when they attempted to board the ship?

A. Sometimes stopped on the dock and sometimes when they attempted to go aboard ships. It is according to how long a man has been going down there.

Q. Mr. Cunningham, did there come a time when the strike of July 18th terminated?

A. Yes, sir.

Q. Do you know how it was ended?

A. When the strike was ended I was notified by the agent and was told then how it was terminated.

Q. Who was the agent?

A. Robert Gurtov.

MR. CASTIELLO: That is all. We won't go into the agreement.

CROSS-EXAMINATION.

By MR. BROWN:

Q. Mr. Cunningham, you don't know of your own knowledge who hires those officers on City Docks 3 and 4, do you?

A. Do I know personally who hires them?

Q. Yes, sir.

A. No, I don't.

Q. You don't know who pays them?

A. No, sir.

Q. You don't know what kind of commissions they have got, of your own knowledge?

A. I don't know what kind of commissions they have got. I know they are not city police, though.

Q. Just because they don't have a blue uniform on?

A. Well, I know this, too, that on the other City docks, the municipal piers there, they don't have any gunmen like that running around there.

Q. Do you know whether there is any private arrangement of the Southern Steamship Company concerning those police?

A. I don't.

Q. So it is purely a guess on your part to call them guards of the Southern Steamship Company, isn't it?

A. Well, I guess so.

Q. Now, as a matter of fact, you go down there to the foot of 75th Street today, at the east end of Dock 3, and you will find what you might call a sort of a barricade or banister going across the dock, don't you?

A. Yes, sir.

Q. It has a gate in it?

A. That barricade or banister has no gate in it.

Q. A little teeny gate?

A. Well, if it is there they put it in there recently. I haven't seen it.

Q. That is there all the time on the Southern vessels in port, isn't it?

A. There is no barricade up there. With a Southern vessel they stretch a rope up there.

Q. Well, they either have boards going across there or a rope?

A. Yes, sir.

Q. There is something there to keep people who don't have business with the ship away and off from Dock 3, isn't there?

A. There is a rope stretched out there. I don't know what it is stretched there for. I guess that is what it is.

Q. So, while members of the public, sightseers, vacationers, and so on, come down to the foot of 75th Street and they go on the City Dock No. 2, they don't have access to City Docks 3 and 4, do they?

A. Every Sunday you can see them promenading up and down there, and any other day.

Q. But they don't go beyond that rope that is stretched across there?

A. They do occasionally.

Q. Occasionally but not often?

A. It is not like an open thoroughfare, no, but they go up and down the dock and nobody stops them.

Q. Of course, any seaman going up there, he might be going to get a job, might he not?

A. Not in this port.

Q. Well, I understand it is claimed by the N. M. U. you have got some members of your union on Southern Steamship Company vessels?

A. We have.

Q. How did they get their job?

A. They got them through other ports, because nobody ships off this port, to my knowledge. If they do, they certainly keep it quiet.

Q. So a lot of those fellows you are talking about, going down to get a meal, for all you know they go down there to get a job?

A. If they do go down there to get a job they certainly don't let anybody know about it in this port.

Q. You never have gone down there to beg a meal, have you?

A. Not yet.

Q. They probably knew you have a nice job with the union and don't need to take a job?

A. I don't have a job with the union now.

Q. At the time you went down?

A. Yes, sir.

Q. They knew you were a union man?

A. Yes, sir.

Q. What are you doing now?

A. I am on the beach.

Q. How long have you been on the beach?

A. Since October 18.

Q. 1938?

A. 1938.

Q. From August, 1938, to October, 1938, did you go to sea?

A. Yes.

Q. One ship?

A. One ship.

MR. CASTIELLO: I object to this line of testimony. It is wholly irrelevant and immaterial to the issue.

Q. Let me ask you this, in the engine department or the deck?

MR. CASTIELLO: Now, wait a minute. You don't have to answer the question.

Q. Were you on the deck or the engine department?

A. Engine.
Q. What capacity?
A. Oiler.
Q. How long did you go to sea as an oiler?
A. About ten years.
Q. Do you hold any licenses?
A. No.
Q. Ever apply for a license?
A. Never applied for any.
Q. Ever take an examination?
A. Never took an examination.
Q. Did you ever serve as fireman?
A. Yes.
Q. Wiper?
A. Yes.
Q. And oiler?
A. Yes.
Q. Every unlicensed capacity in the engine room?
A. Yes, sir.
Q. Did you ever serve on the "Fort Worth"?
A. Yes, sir.
Q. That has two boilers, hasn't it?
A. Two boilers.
Q. It has two boilers, to your knowledge, and she is an oil burner, isn't she?
A. To my knowledge, she is.
Q. Now what were these arrangements you made about the safety of this vessel when you anticipated this so-called sit-down strike?
A. I didn't make any arrangement.
Q. What did the crew make?
A. The crew made arrangement to keep the steam off the deck. That is the only arrangement they made. The rest of the steam supposed to be carried on down in the engine room, that is, in regard to the auxiliaries, keeping steam up on the ship, that has to be taken care of, but there was no steam to be kept on deck.

Q. Those arrangements were made in your presence at this meeting at the Union house the night before?

A. It was the afternoon.

Q. On Sunday?

A. Sunday.

Q. It was definitely understood by everybody that no steam was to be furnished to the deck winches, wasn't it?

A. Yes, sir.

Q. You counseled them in that, didn't you?

A. I agreed to it.

Q. You said the Union would back them up?

A. One hundred per cent.

Q. What arrangement did you make, if the Union made no agreement with the company, that those men would sit there for days on end, what was the Union going to do?

A. The Union would see they would be fed.

Q. You had authority to act on behalf of the Union on that?

A. Yes, sir.

Q. Jarvis and Gurtov were fully advised on what you were doing?

A. They were right there.

Q. What did they tell the men at that time, if the Master or any agent of the United States Government reminded them they were under Articles which bound them to obey the lawful commands of their officers?

A. Told them to sit there.

Q. To disobey the orders, didn't you?

A. No.

Q. To refuse to obey the orders?

A. To refuse to furnish steam, or to refuse to let go those lines. That was the only instructions those men had.

Q. You, of course, were present on the dock during most of that day on the eighteenth, weren't you?

A. No, sir.

Q. Were you there at any time?

A. I was there occasionally.

TRIAL EXAMINER SEAGLE: What do you mean by "refuse to let go of the line"?

THE WITNESS: In the event they got ready to sail.

TRIAL EXAMINER SEAGLE: Which lines did you mean?

THE WITNESS: The mooring lines. The ship was secured to the dock, and they were not to sail the ship.

Q. You saw the deck crew and the engine crew sitting down on the poop-deck, didn't you?

A. Yes, sir. I don't know what crews they were. I saw the unlicensed men of that ship sitting back on the poop-deck.

Q. You knew that the members of the deck department refused to do the maintenance and do the work that was ordered them to do by the officers?

MR. CASTIELLO: The testimony shows this man was on the dock and he knows nothing at all of what went on on the "City of Fort Worth" during the strike.

MR. BROWN: Maybe he does. Let me ask him.

THE WITNESS: Well, let me answer that.

TRIAL EXAMINER SEAGLE: Read the question.

(Question read.)

TRIAL EXAMINER SEAGLE: Your question is whether he knows about it?

MR. BROWN: Yes, sir.

THE WITNESS: I don't know, because I couldn't get on the ship.

Q. You do know they did not do any work?

A. I know when they first started, 8 o'clock in the morning, we were down there in a position close enough to talk to them on the poop-deck, and they moved the line back

down the dock there where we couldn't even holler to them on the poop.

Q. Who moved the line?

A. The city police, or the Southern men.

TRIAL EXAMINER SEAGLE: What line?

THE WITNESS: The line on the dock there, they moved it down so far we couldn't holler up on the deck. So whether they were city police or goons, whatever they were, they moved it.

Q. These goons, I am not acquainted with that, unless you are referring to the comic strip.

A. These gunmen.

Q. Anybody with a gun on him, he is a goon unless he has a blue uniform on, is he?

A. If they take part in labor dispute.

Q. So, the only arrangements made by the Union to protect the safety of that vessel was that the fireman was to put a head of steam on the boilers and keep it there, by refusing to let any steam to be put on the deck winches?

A. There was supposed not to be any steam on those winches so they could work cargo. The main purpose of the strike was to keep cargo from being worked.

TRIAL EXAMINER SEAGLE: Mr. Brown, for your information, there was considerable testimony by members of the crew who were questioned as to what occurred there.

Q. Of course, you understood at the time that you decided to take these steps, on Sunday afternoon, that the vessel intended to work cargo, didn't you, on Monday?

A. Well, that is the proper procedure there when they lay alongside the dock, on Monday morning they start working cargo if there is any there.

Q. A Southern vessel usually sails on Monday, and that is when you thought the "Fort Worth" would sail?

A. Yes, sir.

Q. And you were going to refuse to deliver the steam to work the cargo?

A. To work the cargo.

Q. Did it occur to you, Mr. Cunningham, that in counseling that, that in urging it, you were violating the law of the United States?

MR. CASTIELLO: I object to that. The witness is not competent to testify on that.

TRIAL EXAMINER SEAGLE: The objection is sustained. I think the law of the United States is a matter of public record of which the Court will take cognizance.

MR. BROWN: Your Honor, I think I am entitled to know what was in this man's mind. If he is a criminal we are entitled to know it.

MR. CASTIELLO: We object to the use of that term.

MR. BROWN: If he counsels or aids or——

THE WITNESS: If the Southern Steamship——

TRIAL EXAMINER SEAGLE: Just one moment.

MR. BROWN: —for the purpose of crime, I think, as a matter of his good faith and for various other reasons, we are entitled to know it, if the man knows or does not know whether it is a violation of law.

TRIAL EXAMINER SEAGLE: Do you want to know whether he personally considers it a violation of the law?

MR. BROWN: Yes.

Q. I said, were you not aware when you counseled and aided in that, that you were violating a law of the United States?

A. I did not.

Q. You don't think you were?

A. I certainly don't think I was.

Q. You were aware that these men were under articles, were you not?

A. I didn't know they were under articles; no, sir.

Q. You had good reason to believe they were under articles, didn't you?

A. Under coastwise articles, where they sign on before the master of the vessel.

Q. Whether they signed on before a master or commissioner, did you know it?

A. I don't know anything about the inner workings of the Southern Steamship.

Q. In the event they signed articles before the master, calling for a round trip voyage, and you counseled and aided and prompted them to disobey those articles, do you then feel that you are violating the law?

MR. CASTIELLO: I object to this, as to whether he knew it was a violation of the law. Certainly the issue here is not whether this man made a violation of the law.

TRIAL EXAMINER SEAGLE: The objection is sustained.

Q. Of course, in your experience at sea it is not customary for a second assistant engineer to fire a boiler, is it?

A. No, sir.

Q. It is not customary for a third assistant engineer to fire a boiler, is it?

A. No, sir; because he is signed on as an engineer and not a fireman.

MR. CASTIELLO: I object to this line of testimony again. I don't want to be a stickler about objections. However, I fail to see the materiality.

MR. BROWN: He brought it out here that they were making arrangements for the safety of his ship.

MR. CASTIELLO: We are not speaking of conditions at sea. The factual situation is, the "Fort Worth" was moored fast to a dock here at Houston.

TRIAL EXAMINER SEAGLE: I believe your question does relate to what would be done by the officers at sea.

MR. BROWN: In port, then.

Q. Does the third assistant engineer customarily fire a boiler in port?

A. No.

Q. Firemen ordinarily do that, don't they?

A. That is what he is being paid for.

Q. Now, you agree with this, don't you, Mr. Cunningham, that if they are going to work cargo and use steam on the deck winches the safety of that ship with cargo and men aboard her, moored next to a dock filled with inflammable cargo, absolutely requires that generally a head of steam be kept on at least one boiler during the day.

MR. CASTIELLO: The question presupposes first, that on the dock there was inflammable cargo. There has not been a single word of testimony on that by men who were in a better position to testify than this witness is.

TRIAL EXAMINER SEAGLE: The objection is sustained.

Q. Strike out the "inflammable cargo on the wharf, on the dock,"—cargo on the ship?

A. I don't know what was on the ship.

Q. You saw cargo going on the ship, didn't you?

A. I didn't see cargo going on the ship.

Q. Was she down in the water or riding high?

A. The "City of Fort Worth" was moored alongside the dock and was sitting in the water. As to how many feet of water she was drawing, I did not notice, because I did not think that had a thing in the world to do with what was going on on that ship.

Q. You want us to understand that she had no cargo in her, do you?

A. I want you to understand I don't know what was on the ship or on the dock, because I was not on her.

Q. Were you down there on Saturday?

A. No.

Q. Sunday?

A. No.

Q. Monday was the first time?

A. Monday was the first time.

Q. They were working the winches the first time you were there on Monday, weren't they?

A. I didn't see any winches working on the "City of Fort Worth."

Q. Did you hear any winches working?

A. I don't remember.

Q. Well, suppose she doesn't have any cargo. She just had about 20 men there, including about thirteen men who would not obey the master's command, sitting back there on the poop deck, and when you are working the winches, for the safety of that vessel it is necessary that they keep a head of steam on at least one boiler during the day, is it not?

MR. CASTIELLO: We object to it as calling for an opinion.

MR. BROWN: He has expressed one. Let him express one on that.

MR. CASTIELLO: I think the Examiner is entitled to rule on my objection, don't you?

MR. BROWN: I think so, but I think I am also entitled to let him have the benefit of my views.

TRIAL EXAMINER SEAGLE: The objection is overruled.

(Question read.)

A. It is customary.

Q. Now, there is very little difference between us on that, is there, Mr. Cunningham? You would say you are

interested in the safety of the members of your union, of course?

A. Yes.

Q. That that steam was necessary to keep the vessel and her crew safe during the day wouldn't you say?

A. At least on one boiler, yes.

Q. So that in the event they proceed to work cargo by the use of the deck winches, for the safety of the vessel it was essential that somebody be there to keep the fire in the boiler, isn't that right?

A. Yes.

Q. And if the firemen refused to do their lawful duty, it fell upon the shoulders of the licensed engineer, didn't it?

A. He was the proper man to do it.

Q. He ordinarily does not have to do that kind of work, in a well managed, disciplined ship, does he, the engineer?

A. What do you mean, "well managed, disciplined ship"?

Q. Where the men do their proper work, the work they are hired to do?

Mr. Castiello: Now, if the Examiner please, my objection is that Mr. Brown is again assuming that he has already established through this witness that the crew had refused to obey the orders of the master. Now, this witness has stated that he is not in a position to know what that crew did or did not do.

Trial Examiner Seagle: I take it the question is purely hypothetical.

Mr. Brown: I will withdraw the question.

Q. You also knew, didn't you, as a former fireman, that on an oil burning ship you have to keep enough head of steam on the boiler so that it is sufficient to operate the fuel pump, and in the event the steam pressure drops below the amount required to operate the fuel pump the ship has no means of protecting herself in any sort of an emer-

gency like collisions or fires or any other circumstances, has she?

A. There is bound to be some steam pressure there if you have the pump going.

TRIAL EXAMINER SEAGLE: Mr. Brown, I don't know whether you are familiar with the testimony in Philadelphia by the ship's officers. They testified as to the duties of the crew and what happened as a result of the strike.

MR. BROWN: I have not read the testimony coming from the union's witness.

TRIAL EXAMINER SEAGLE: I believe both the Board's witnesses, and the officers as well, testified as to what happened during the strike.

Q. My recollection of your testimony is that you spoke to Mr. Shreider once?

A. Once.

Q. And that was some time in January, 1937?

A. 1938.

Q. Can you be any more exact?

A. As to the exact date?

Q. Yes.

A. No, I can't.

Q. Weren't you aware that this matter was being handled up in Philadelphia, certain demands had been made the month before, were being made? Hadn't someone in your organization advised you of that fact?

MR. CASTIELLO: I will stipulate with you there were certain demands made by the union up in Philadelphia, after certification by the Board, if you care to stipulate.

MR. BROWN: I am unable to stipulate, Counsel, because I don't know the facts. I just don't know.

By MR. BROWN:

Q. Weren't you aware that something was being done in Philadelphia?

A. As is customary in those cases, whichever port there is a terminal of a line, we go to both places and get passes.

Q. Did you know it was being handled out of Philadelphia for your organization?

A. I know it should have been done, but I didn't know. I was working under the agent of the port.

Q. Well, it is fair to say after you did approach Mr. Shreider he very courteously told you his position, didn't he?

A. Yes.

Q. In other words, there weren't any hot words or anything like that?

A. No, sir, no hot words with Mr. Shreider at all.

Q. He explained to you very clearly that after all he didn't have the authority to hand e the matter?

A. He explained to me he did not have the authority, he would have to get in touch with the home office, but he would get in touch with them and notify us.

Q. In the meantime hadn't you been advised by your union that your union lawyer or representative was handling it with the company lawyer up in Philadelphia?

A. I was not advised as to that.

Q. But you never went back and called on Mr. Shreider again, or saw him thereafter, did you?

A. I was waiting for Mr. Shreider to call us. He said he would call us.

Q. Did you get word on July 16th to the members of the crew that you wanted to see them in the Union Hall?

A. There was a member of that crew came up to the Union Hall and arranged for the meeting himself between the crew and the officials of the union in this port.

Q. Do you remember what his name was?

A. No, sir; I certainly don't.

Q. Was it Warren?

A. No.

Q. Or Pfuhl?

A. I don't remember.

Q. The first time they came in simply to arrange for the meeting on Sunday?

A. Yes, sir.

Q. Now, on Sunday no attempt was made by you or Gurtov, or Mr. Jarvis, to contact Shreider or the master of the "Fort Worth," was there?

A. No, sir.

Q. Were you leaving that to the members of the crew?

A. Leaving that to the members of the crew themselves.

Q. Now, at that time, say on the 17th or 18th of July, did you have any knowledge of any sort of objections that had been filed by the Southern Steamship Company, or an appeal that had been filed by Southern to this certification that you had been advised about?

A. No, sir. When I saw Mr. Shreider he did not question it at all.

Q. That was in January?

A. That was in January.

Q. But I am speaking about July, had you heard anything about this so-called appeal?

A. No, I had not heard a thing in the world about it.

TRIAL EXAMINER SEAGLE: Well, I believe the expression is technically incorrect, Mr. Brown. There never was an appeal.

MR. BROWN: That is correct.

TRIAL EXAMINER SEAGLE: As a matter of fact, the record shows the Board had already ruled on the objection.

MR. BROWN: The rest of us had heard something about it, and I just wanted to know if this fellow heard the same thing.

By MR. BROWN:

Q. Did you present this request for passes for delegates, and a conference for negotiating on a contract, to

Shreider in the form of a letter or was it purely in a conversation?

A. The letter was a letter of introduction and set forth this request of ours after we had been certified. I showed that to Mr. Shreider, and I also told him personally what I was down there for. That is when he told me he couldn't do anything about it.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. In reference to that letter, were there any copies made of that letter?

A. No, sir.

Q. Did you leave that letter in the possession of Mr. Shreider?

A. No, sir; I took it with me. He gave it back to me.

Q. At my request did you make a thorough search for that letter?

A. Yes, sir.

Q. Were you able to find it?

A. No, sir.

Q. When you spoke to Mr. Shreider on this occasion did he question the majority of the N. M. U.?

A. No, sir; he did not.

Q. After you had spoken to Mr. Shreider in the latter part of January, 1938, as you testified, were you after that time able to go on the docks where the Southern Steamship Company moors its vessels?

A. No, sir.

MR. CASTIELLO: That is all.

RE-CROSS-EXAMINATION.

By MR. BROWN:

Q. What knowledge Mr. Shreider had the moment you talked to him in January, 1938. as to the election or the outcome, you don't know, do you?

A. What is going on in his mind? I certainly don't know his business.

Q. Whether he was in a position to challenge the N. M. U., the strength of the majority, or on any other ground you don't know, do you?

A. I don't know his business.

Q. In other words, you again say the only thing that took place was that Shreider left it clearly in your mind that he, Shreider, had no authority to act, and as a consequence he could not discuss it with you any further?

A. Mr. Shreider told me definitely he had no authority to issue passes, he had no authority to arrange for a conference, that he would have to take it up with his home office and whenever he got his answer back he would let us know. That is exactly what Mr. Shreider said and it was very definite.

MR. BROWN: That is all.

TRIAL EXAMINER SEAGLE: Mr. Cunningham, did Mr. Shreider say anything to you to indicate that the company was challenging the validity of the election?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: The hearing will recess a few minutes.

(Short recess.)

TRIAL EXAMINER SEAGLE: The hearing will come to order.

MR. CASTIELLO: Mr. Mandell.

ARTHUR J. MANDELL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Will you state your full name, please?

A. Arthur J. Mandell.

Q. Where do you live, Mr. Mandell?

A. 1702 Wichita, Houston.

Q. Are you a member of the bar of the State of Texas?

A. Yes, sir.

Q. Are you a practicing attorney in the City of Houston?

A. Yes, sir.

Q. Do you represent the National Maritime Union?

A. Yes, sir.

Q. How long have you represented them?

A. Since their inception.

Q. Could you approximate how long that was?

A. I believe they were organized the beginning of 1937.

Q. And you are their local representative and have been the local representative since that time?

A. I represent the National Maritime Union throughout the entire Gulf area, including Houston, of course.

Q. Directing your attention, Mr. Mandell, to July 18, 1938; at that time were you also the local attorney for the N. M. U.?

A. Yes, sir.

Q. Can you tell us whether or not you were apprized, and what time you were, in what manner, of the fact that there was some difficulty on the "City of Fort Worth"?

A. Yes, sir. The agent of the National Maritime Union advised me that the members of the crew of the "City of Fort Worth" refused to sail with the ship because of the company's refusal to issue passes to its delegates, because of the company's refusal to recognize the union, that it had been certified, and various demands of that character.

Q. Who was that agent that you speak of?

A. The agent at that time was Robert Gurtov.

Q. How did he communicate this to you?

A. By telephone.

Q. Was this on July 18?

A. Yes, sir.

Q. Can you approximate what time of day?

A. I think it was shortly in the afternoon.

Q. Did there come a time, Mr. Mandell, when you had communications with anyone representing the respondent in Houston?

A. Yes, sir. Mr. Rayzor, an attorney here in Houston who generally represents the Southern Steamship Company, called me, I was at my house, and spoke to me with reference to this matter.

Q. Did he phone you?

A. Yes, sir.

Q. When did this phone conversation take place?

A. After office hours, some time after 5:00. I was at the house.

Q. Was this on July 18th?

A. On the same day, July 18th.

Q. Will you tell us what his full name is, Mr. Mandell?

A. Newton J. Rayzor.

MR. BROWN: J. Newton Rayzor.

THE WITNESS: Beg pardon. J. Newton Rayzor.

By MR. CASTIELLO:

Q. Will you give us the substance, to the best of your recollection, of that phone conversation?

A. The best I remember, Mr. Rayzor called me and stated that the Southern Steamship Company's "City of Fort Worth" was unable to sail because members of the crew, the unlicensed members of the crew refused to sail, and called me for the purpose of getting me to intercede with the union to have the vessel sail. Mr. Rayzor at that time discussed with me the situation over the telephone. We then discussed the immediate issue which was failure of the company to issue passes to the delegates so that they could go aboard the ship. That was the paramount question involved. Mr. Rayzor told me that if the vessel would sail and the men would go back to work, the men on the

ship, that he would recommend to the Philadelphia office, to his clients, that passes issue and the delegates be permitted to go aboard the ship. I recall somewhat dimly that there was some talk about an election having been held, that the union was certified, but that the company took some position that the election was not valid, for some reason or other. I think some discussion was with reference to some appeal. Frankly, I don't know whether that discussion took place that evening or the following day, but there was some discussion. Mr. Rayzor, I believe, at that time stated that the steamship company perhaps could get another crew, but that they would rather that the same men sail the ship, as best as I can remember, I think in language somewhat to this effect, or perhaps in substance it was that some of these men may have been on the ship for some time, evidently they were all good workers, to let them go ahead and stay on the ship.

Q. Who is now speaking?

A. Mr. Rayzor. Let them go ahead and stay on the ship and continue working, and if there is any bona fide dispute there was no reason why Mr. Rayzor and I could not discuss it and perhaps dispose of it subject to the approval of the Philadelphia office; that I told him that if he promised me that he would recommend to the Philadelphia office that passes issue, and that delegates be permitted to go aboard the ship that I would use my offices and my influence with the union, that the vessel sail. There was also a promise made that an answer would be given us with reference to the issuance of passes to delegates by the twenty-first of July. Now, pursuant to this conversation I called the union officials that night.

Q. Now, just wait a minute, Mr. Mandell. Was there a definite agreement arrived at with Mr. Rayzor on this occasion over the phone, which terminated the strike and led to the releasing of the "City of Fort Worth"?

A. Yes, sir.

Q. Was there, as part of the agreement which terminated the strike, an agreement on the part of Mr. Rayzor

representing the respondent relative to the discharge of the strikers who had taken part in the strike of July 18th?

MR. BROWN: If your Honor please, I would object to that, not so much because the inquiry is being made, but as to the form of the question. I think the proper inquiry is what was said with respect to that. The Court, the Examiner and the Board, is to draw the conclusion as to whether there was any agreement.

TRIAL EXAMINER SEAGLE: The objection is sustained to the form of the question.

Q. Was there any agreement arrived at relative to the continued employment of the strikers?

MR. BROWN: I make the same objection.

TRIAL EXAMINER SEAGLE: Well, I suppose counsel is using the word "agreement" in the actual sense. I suppose your question is whether there was any agreement discussed?

MR. CASTIELLO: Yes, and whether there was any agreement made of course naturally follows.

MR. BROWN: Isn't the proper question, what was said about that? I have no objection to his putting it in that form.

TRIAL EXAMINER SEAGLE: Well, was there anything said about the question of the continued employment of the strikers?

THE WITNESS: There was some discussion with reference to that.

TRIAL EXAMINER SEAGLE: In this telephone conversation you had with Mr. Rayzor?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: In the first telephone conversation?

THE WITNESS: In the first telephone conversation I can't say what Mr. Rayzor had in his mind, but I can tell here what the conversation was.

Q. Yes.

A. Now, the conversation was something like this: "Now, we don't want to discharge these men." That is Mr. Rayzor saying that. "Some of them have been on the ship for some time, good workers. We want them to stay on the ship, let them go back to work, let them sail the ship, let them stay on the ship. I promise you that I will recommend to the Philadelphia office that they issue passes to the delegates to permit the delegates to go aboard the ship." Now, that was the conversation. I have my own conclusions what that means, what it meant to me, anyway, and I think an agreement had been arrived at, but that was the substance and the gist of the conversation, that the men go back to work, "That we don't want to file any charges." Of course, I knew Mr. Rayzor meant charges before the Bureau of Marine Inspection and Navigation.

TRIAL EXAMINER SEAGLE: Did Mr. Rayzor actually say there would be no charges filed?

THE WITNESS: "We don't want to file charges."

TRIAL EXAMINER SEAGLE: He said that?

THE WITNESS: Yes, sir. "We don't want to file charges."

TRIAL EXAMINER SEAGLE: He said that in connection with the men refusing to continue to work the ship?

THE WITNESS: He said it in the conversation I stated. "We don't want to file charges, let the men go to work, sail the ship; let them stay on the ship." That was the nature of the conversation.

Q. Now, after that telephone conversation did you counsel the business agent of the N. M. U. to release the ship?

A. Now, I don't tell the union what policy to follow. They don't pay any attention to me. I merely tell them that I know Mr. Rayzor, that I can rely on what he says, but I know that he represents the Southern Steamship Company, that if he makes a recommendation generally the steamship company follows his recommendation, that in view of what Mr. Rayzor told me I would very much like to see them release the ship, and that I have a conference with Mr. Rayzor the following day, let them go ahead and go back to work and maybe the matter will be straightened out in that manner, and I felt reasonably sure that passes would be forthcoming, and because of what I told them the vessel sailed.

Q. Whom did you contact of the union?

A. Mr. Gurtov.

Q. And he is the business agent?

A. He was at that time.

Q. Did you contact him after you had spoken to Mr. Rayzor?

A. The same evening, yes.

Q. Now, Mr. Mandell, you have been counsel for unions in many matters, have you not?

A. Yes, sir; I represent a number of labor unions here.

Q. Will you state whether or not you would have agreed to the settlement of this strike if it were not your understanding that the men who had participated in the strike would not be discharged?

MR. BROWN: Your Honor, I object to that on the ground that it is immaterial and incompetent and irrelevant. There is nothing shown on which he could have based such a conclusion or opinion.

TRIAL EXAMINER SEAGLE: Well, Mr. Mandell, you say you have represented a number of unions. Now, while representing such unions have there been occasions when you were called upon to counsel the union with reference to a strike?

THE WITNESS: Yes, sir; many times.

TRIAL EXAMINER SEAGLE: There have been many such occasions?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: I take it your question is this: Whether in the witness' experience he has ever counseled a union to abandon a strike unless he was sure that the strikers would be taken back to work?

MR. CASTIELLO: Yes, sir.

TRIAL EXAMINER SEAGLE: And would be continued in their employment?

MR. CASTIELLO: Yes, sir.

MR. BROWN: Except, your Honor, he asked it in hypothetical manner, what he would have done in this case, not what he has done in the past.

MR. CASTIELLO: All right, I will try to satisfy counsel's objection.

MR. BROWN: And, of course, it is immaterial what he has done in other strikes, other situations.

TRIAL EXAMINER SEAGLE: I don't think it is immaterial. Do you withdraw the question?

MR. CASTIELLO: I will withdraw the question for the time.

By MR. CASTIELLO:

Q. Mr. Mandell, have you been counsel for labor organizations where you have previous experiences where men had gone on strike?

A. Yes, sir; I have advised, aided, and counseled many labor unions into disposition and settlement of numerous strikes.

Q. And in the settlement of strikes of that kind have you had any experience relative to the continued employment of the strikers?

A. Yes, sir. From my experience in the practice of law and labor matters, I never have and never would advise or willingly agree to a disposition of a labor dispute which would result in the discharge or loss of employment to any of the employees by reason of their participating in a labor dispute or strike of any nature.

MR. BROWN: I move to strike the answer for the reasons I previously stated, incompetent and irrelevant, and has no bearing on this case.

TRIAL EXAMINER SEAGLE: The motion is denied.

By MR. CASTIELLO:

Q. Was that the position that you took in the matter now at issue, Mr. Mandell?

A. That is my position in all matters, including this one. There was no discussion had about the discharge of these men. There was nothing said—let me change that. Mr. Rayzor never told me he would not discharge these men or that he would discharge them. No such language was used, but the language, as I have stated, that was used, foreclosed any idea in my mind that any of the men would be discharged. It just did not enter into my mind. On the contrary, the discussion as it was, and as related, seemed that no one ever intended to discharge his men. On the contrary, the language used was, "Let them go back to work, let them stay on the ship, let them sail the vessel." That meant to me that the men would remain on the ship and that there would be no discriminatory action taken. That discussion meant that to me. I certainly so stated to my clients.

Q. If you for a moment understood by that conversation that the men were to be discharged would you have advised your clients to release the ship and the strike?

MR. BROWN: Same objection, your Honor.

TRIAL EXAMINER SEAGLE: The objection is overruled.

A. If I would have had any idea that something like that might have been done I would not have attempted to persuade the National Maritime Union to get the ship to sail.

Q. So your answer is "no"?

A. Indeed.

Q. Now, after this phone conversation did there come a time when you met with Mr. Rayzor again?

A. Yes.

Q. When?

A. The following day, I think.

Q. That was after the ship had sailed?

A. Yes, sir.

Q. And what was the purpose of getting together with him this time?

A. Really, it was to discuss in more detail what had been discussed over the telephone, because the telephone was merely a telephone conversation and there was an emergency, and Mr. Rayzor wanted the vessel to sail, so we merely met to discuss in more detail what had already been discussed over the telephone.

Q. And what you have now testified to?

A. What I have now testified to, just in more detail. We, of course, discussed from the academic statement what the law requires, what the National Labor Relations Act requires, and the position that I had taken the following day was that even though the company may challenge the validity of the certification or the fact that a union has or has not a majority aboard their vessels, my position was they were still entitled to have the delegates contact the ship and go aboard the ship, and have passes issued to them, because they had memberships there and the failure to do so was in my opinion a violation of the Act, of 8 (1), and Mr. Rayzor again agreed to recommend, and I believe he told me he already did by telegram, I don't recall exactly, to let passes issue to the delegates.

Q. Was there a time set when the union was to be informed whether or not the recommendation of Mr. Rayzor was followed?

A. Yes, sir. I was supposed to get an answer on the 21st of July.

Q. When the twenty-first came did you get an answer?

A. No, I called and spoke either to Mr. Brown or to Mr. Eikel, both members of the firm of Royston & Rayzor.

TRIAL EXAMINER SEAGLE: What was that second name?

THE WITNESS: Eikel.

MR. BROWN: Robert Eikel.

Q. Will you relate this conversation?

A. I know I spoke to Mr. Brown, I think I spoke also to Mr. Eikel. I was then advised——

TRIAL EXAMINER SEAGLE: That is the same Mr. Brown, I take it, who is here this morning?

THE WITNESS: Yes, sir; the same Mr. Brown who is counsel here. Mr. Brown advised me that they had received no answer as yet, and gave as a reason that a Mr. Delanoy, I forget his position, some important key position with the respondent, died.

TRIAL EXAMINER SEAGLE: Can you tell us how that name is spelled?

MR. BROWN: George Delanoy, D-e-l-a-n-o-y.

MR. CASTIELLO: Can you give us his position?

MR. BROWN: Vice-president and operating manager.

TRIAL EXAMINER SEAGLE: Was his office here in Houston?

MR. BROWN: No, in Philadelphia. I might say that he was the chief executive of the company after Mr.

Miller's death, which had preceded his some two or three months.

TRIAL EXAMINER SEAGLE: Does he occupy the position now occupied by Mr. Sherry?

MR. BROWN: No, he was above him.

THE WITNESS: I didn't know at that time who Mr. Delanoy was or what his position was, and the situation was urgent and acute, and my clients kept on calling me and I was a little bit out of patience with the fact that somebody of the company had died, that they should hold up our answer, but Mr. Brown explained to me the position and asked that he be given until the twenty-third. Of course, after he told me I saw that their position was correct. I called my clients and told them of the delay and the reason for it and we waited for the twenty-third to come around to get the answer.

Q. Is that the twenty-third of July?

A. Yes, sir.

Q. 1938?

A. Yes, sir. On the 23rd no answer was forthcoming. I think I spoke to Mr. Eikel at that time, and they still did not have an answer.

Q. Did you call him or did he call you?

A. I think I called him.

Q. By phone?

A. Yes.

Q. What did he have to say and what did you say, please?

A. I asked him what did he hear, and he just said, "I just didn't hear. There is nothing we can do about it but wait." I don't think there were any vessels in at that time, but on the 25th Mr. Eikel called me——

Q. That is of the same month, is it not?

A. Yes, sir—and told me that they received a telegram.

Q. From whom?

A. From Philadelphia. Either from the owners or the attorneys representing the owners, and they said they will not issue passes, will not allow the delegates to come aboard the ship. There was some other conversation had, I suppose with reference to negotiation or collective bargaining, but I was primarily interested in the passes and the delegates, and they stated they were very sorry that the recommendation was not followed but that was all they could do about it. A little bit later in the day I think I called and spoke to Mr. Rayzor, and asked whether he would let me have a copy of the telegram. At that time Mr. Rayzor told me they were in error, there was no wire, but it was a phone conversation, and gave me the name of the attorney. I think it was Mr. Childs, or maybe Mr. Adams, and gave me the name of the firm in Philadelphia.

Q. Do you mean the name of the law firm?

A. Yes.

Q. Do you recall it as being Adams, Childs, McKaig & Lukens?

A. Yes, that was it; and that was the end of the negotiation and conversation with reference to the settlement of the Southern Steamship Company incident.

TRIAL EXAMINER SEAGLE: You said Mr. Rayzor told you there had been no telegram, but he had——

THE WITNESS: But a telephone conversation.

TRIAL EXAMINER SEAGLE: Did he tell you with whom he had that conversation?

THE WITNESS: It was either Mr. Adams or Mr. Childs. I don't recall.

TRIAL EXAMINER SEAGLE: You do know definitely it was with some attorney representing the Steamship Company?

THE WITNESS: Oh, yes, yes. And, of course——

TRIAL EXAMINER SEAGLE: Did he tell you when he had had this telephone conversation?

THE WITNESS: I am sure it was on the same day, the 25th.

TRIAL EXAMINER SEAGLE: Did he tell you he had spoken to this man on the same day?

THE WITNESS: I don't know whether he told me that or not, but I think it was the same day. The conversation was in such manner that the information was just received.

TRIAL EXAMINER SEAGLE: He indicated he had gotten this information——

THE WITNESS: Yes, that very day.

TRIAL EXAMINER SEAGLE: —that very day?

THE WITNESS: Now, of course, the information that came over the telephone was of the same content that they told me previously what the wire stated.

Q. In other words, Mr. Rayzor told you there was not in fact a wire, but it was a telephone call?

A. Yes, but it did not change the status or the contents of the conversation.

Q. Since that time up to the present has the local attorneys for the Southern Steamship Company or any of their agents contacted you, or to your knowledge any of the representatives of the Union, relative to any agreement for collective bargaining?

A. They never contacted me, and to my knowledge they have not contacted anybody of the local officers, or for that matter the Gulf District officers of the National Maritime Union.

Q. If they had would you be in a position to tell us whether they had or not?

A. If they had I would have been advised of such action, and I have not been advised of such action. As a matter of fact, recently in New Orleans, last Thursday, the Gulf District committee told me that they have not as yet

been able to get anywhere with the Southern Steamship Company.

MR. BROWN: Your Honor, I move to strike the answer as hearsay. I could not anticipate what it was going to be. It was not made in the presence of any responsible representative of the Respondent, and is immaterial.

TRIAL EXAMINER SEAGLE: What position does this man occupy?

THE WITNESS: The Gulf District committee, the Chairman of the Gulf District committee.

TRIAL EXAMINER SEAGLE: He is an official of the N. M. U.?

THE WITNESS: Yes, sir; the National Maritime Union has two districts at the present time.

TRIAL EXAMINER SEAGLE: The motion is denied.

Q. And is that the same situation as far as the issuance of passes to the delegates is concerned?

A. As far as I know, no passes have been issued up to the present time.

Q. In your conversations both of July 18 by telephone, and on July 19 in conference with Mr. Rayzor at his office, it did take place at his office, did it not?

A. Yes, sir.

Q. Did he at any time question the majority of the N. M. U.?

MR. BROWN: I object to that question because it assumes as a fact that he had possession of knowledge which would give him information on which to base any objection or complaint, and that he had any authority to make any such objection or question.

TRIAL EXAMINER SEAGLE: The objection is sustained.

Q. Did Mr. Rayzor in your two communications with him, both the telephone conversation of the eighteenth and the conference of the nineteenth, ever give you any indication at all that he had no authority to negotiate a settlement of this strike?

A. I did not know—there was nothing said about any authority or no authority save this, that Mr. Rayzor made it clear to me that he would make recommendations to Philadelphia, but Mr. Rayzor did not tell me that he did not have any authority to talk to me about the matter that he did. Evidently he did have authority to call me and attempt to get the vessel released, but he did tell me that all he could do was to make recommendations about the issuance of passes. There was no doubt in my mind that he had authority to call me and try to get the vessel to sail.

MR. CASTIELLO: That is all.

CROSS-EXAMINATION.

By MR. BROWN:

Q. Are you really clear in your mind, Mr. Mandell, that Mr. Rayzor did not specifically call your attention that he had no authority to make any agreement on behalf of Southern?

A. Well, I don't remember him saying it just that way. I do remember him saying that all he could do was recommend to Philadelphia.

Q. You so understood that he had no more authority than that?

A. Yes, sir.

MR. CASTIELLO: That is, in reference to the passes?

THE WITNESS: Yes, sir.

Q. Well, as a matter of fact, the only thing that was mentioned that he would agree to recommend was passes to delegates, was it not?

A. That is right.

Q. And as you have so very clearly stated, there was nothing mentioned in so many words, or promise made by Mr. Rayzor or you about firing the men or discharging them or letting them continue working on after they got to Philadelphia, or kicking them off the ship, or filing charges of any kind, was there?

A. Such language as you used was not used other than what I have stated. With reference to filing charges, I remember him saying, "We don't want to file charges." Now if Mr. Rayzor meant here or in Philadelphia or from now on, I don't know, but that is what he said.

Q. And on that his statement was, "We don't want to file charges"?

A. Yes, sir.

Q. His statement was, "We will not file charges," or "We agree not to file charges"?

A. He just said, "We don't want to file charges."

Q. As a matter of fact, whether he was referring to the charges before the Bureau of Marine Inspection or before a Justice of the Peace or Commissioner, you had no way of knowing, did you?

A. No, I had no way of knowing any more than to know that Mr. Rayzor and his very able law firm would know that there could not be any other charges filed.

MR. CASTIELLO: But what?

THE WITNESS: But the ones before the Marine Inspection and Navigation or a possessory libel. That is about all.

Q. Do you recall whether in his telephone conversation of July 18 the time limit was to be on this question of passes to delegates?

A. Probably was. I couldn't say whether—I am reasonably sure there was, on July 18.

Q. Well, this much is very clear, no one agreed that they would issue passes or permit delegates to come aboard, did they?

A. No, sir.

Q. And you did not advise any of your men that such an agreement had been made?

A. No, sir.

Q. You clearly understood and you made it clear to them that the only agreement on that was one made by Mr. Rayzor as an attorney to recommend to the company that that be done?

A. That is correct.

Q. Now, the truth of the matter is, Mr. Mandell, is it not, that this question about firing the men or letting them work on after they got to Philadelphia was not discussed by you intentionally in indirect language or direct language?

A. It was discussed in the manner I just stated.

Q. That is what you had in mind by those words?

A. Frankly, Mr. Brown, to me it was a condition precedent to anything, of any such settlement, and the discussion that we had to me meant that there wasn't in anybody's mind any idea to discharge them, and I believe honestly that Mr. Rayzor never had any in his mind.

Q. Of course you understood at that time, after you had finished the conversation with him, that you two in that conversation, you had not attempted to settle the matter of the labor relations between the Southern Steamship Company and the N. M. U., did you not?

A. No, sir; it is not that easy.

Q. That was to be left up to Philadelphia, between your agents up there and the company's agent?

A. Well, I don't know. That was to be left up to someone else besides myself. I have known of instances where headquarters of certain steamship companies are unable to get together with Union officials, such as New York, and the economic action was taken in the Gulf and they were able to get it.

Q. That is right, but as far as settling the strike, the only thing you contemplated you were doing at all was affording an opportunity for that ship to sail; isn't that so?

A. In consideration of Mr. Rayzor's promise to recommend the issuance of the passes, in the conversation as I related.

Q. Isn't it true, Mr. Mandell, in all of this great number of labor situations that you say you and your partners have handled over there in the settlement of strikes and so on, that it is generally a very specific condition stated in so many words that there shall be no discrimination of any kind against persons for participation in the strike?

A. That is very true, Mr. Brown, but I want to state this in connection with that, that that specific agreement is always made after a discharge has taken place, but I have never seen where a matter has been adjusted amicably. There was one matter in it, the sailing of the ship, the return of these men back to work. That was really the emergency that existed at that time. I was asked to see that the men would go back to work, and I tried and was able to succeed to get the men back to work. That was the thing I was supposed to do and I have done it, and in all of such instances going back to work means nothing else but what was said, going back to work, not at the expiration of that particular job they had to do that they were going to be discharged. That never happened.

Q. As a matter of fact, the possibility of their being discharged in Philadelphia did not enter into your mind?

A. No, sir. The possibility they would be discharged did not at all enter into my mind, and I was greatly shocked and surprised that something like that was done. I don't want to speak for Mr. Rayzor, but I think perhaps he was, too. I don't know.

Q. It is correct, is it not, to say that you received the final word from Mr. Rayzor about the position of the company?

A. Yes, sir.

Q. On about the twenty-fifth or twenty-sixth of July?

A. Yes, sir.

Q. The same day that Mr. Eikel of our office had also called you and stated the same thing, only referring to a telegram?

A. That is correct.

Q. And the occasion for your learning that it was not a telegram was when you called Mr. Rayzor back for a copy of the telegram?

A. Yes, sir.

Q. And he then told you he had been so advised in a telephone conversation?

A. Yes, sir.

Q. Now apart from this question of whether any of the men would be fired when they got to Philadelphia, in what Mr. Rayzor said, whether in your construction or his, either, the only agreement in the conversation of the eighteenth and in the office conference the following morning was that Mr. Rayzor would recommend the issuance of passes to permit the delegates to come aboard?

A. That is true.

Q. So the sole issue was the question of passes to delegates, and he made no agreement to recommend or otherwise regarding Union recognition or collective bargaining?

A. Yes, sir. There is no doubt Mr. Rayzor did just exactly what he said he was going to do.

Q. You don't have any reason to doubt that, do you?

A. No, sir; on the contrary, I am convinced that he did it.

Q. There is also no doubt in your mind that you were given the company's final position as early as our office learned of it?

A. I am sure of that.

MR. BROWN: I believe that is all.

MR. CASTIELLO: That is all.

TRIAL EXAMINER SEAGLE: Do you recall exactly what time of day it was when Mr. Rayzor telephoned to you on July 18?

THE WITNESS: I should think it was after 5:30 and before 7:00 in the evening.

TRIAL EXAMINER SEAGLE: You are positive it could not have been before 5:30?

THE WITNESS: I am pretty sure about it because I was at home.

TRIAL EXAMINER SEAGLE: When do you customarily leave your office?

THE WITNESS: After 5:00.

TRIAL EXAMINER SEAGLE: Some time after 5:00?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: How long does it take you to get home?

THE WITNESS: Oh, fifteen minutes.

TRIAL EXAMINER SEAGLE: You say it might have been as late as 7:00 p. m.?

THE WITNESS: Might have been as late as 6:30.

TRIAL EXAMINER SEAGLE: Would you say to the best of your recollection it was some time between 5:30 and 6:30 p. m.?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Did you ask Mr. Rayzor whether he had already been in touch with the company?

THE WITNESS: No, sir.

MR. CASTIELLO: May I ask, are you referring to July 18?

TRIAL EXAMINER SEAGLE: Yes. My question was whether he stated to you in his telephone conversation on July 18 that he had already been in touch with the company?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: You did not ask him that?

THE WITNESS: No, sir; I did not ask him that. You see, I knew Mr. Rayzor represented the Southern Steamship Company. I took it for granted it was a general conversation representing his client.

TRIAL EXAMINER SEAGLE: That is all.

By MR. BROWN:

Q. Mr. Mandell, in your representation of the N. M. U., you knew that so far as the firm of Royston & Rayzor is concerned, that on July 18 when Mr. Rayzor called you it was the first time to your knowledge that we had had anything to do with labor relations for that company?

A. That is the first time that Mr. Rayzor called me with reference to the Southern Steamship Company dispute with the N. M. U.

Q. If there had been any discussions with the Union delegate, with you or anybody else, there was no occasion prior to that time where we had been brought into the picture at all?

A. I don't know of any occasion that you ever called me about it.

MR. BROWN: That is all.

RE-DIRECT EXAMINATION.

By MR. CASTIELLO:

Q. Well, do you know of any occasion where the firm of Royston & Rayzor represented Respondent or company in labor relations matters?

A. I think they represent them in some longshoremen's difficulties, if I am not mistaken. I know this, that the firm of Royston & Rayzor represent the Southern Steamship Company in practically every legal matter that may come up, whether it be labor relations or any other matter.

TRIAL EXAMINER SEAGLE: Well, do you know that they have been representing them before July 18?

THE WITNESS: Yes, we had several matters against the Southern Steamship Company where their firm represented them. Of course, they were not of this nature, but they were legal matters.

TRIAL EXAMINER SEAGLE: I was not referring particularly to matters of the same character. Any further questions?

By MR. BROWN:

Q. Those were damage suits that you refer to?
A. Yes, sir.
Q. But no labor relations work?
A. No, sir.

MR. BROWN: That is all.

TRIAL EXAMINER SEAGLE: The witness is excused. Do you have any other witnesses?

MR. CASTIELLO: No. I would like to make a statement for the record on other witnesses. I had contemplated calling Mr. Joseph Warren, Mr. Robert Gurtov, and Mr. Jarvis, but they are unavailable, Mr. Examiner, so of course I cannot go on, and with that the Board rests.

MR. BROWN: I have not had anything to do with the handling of the case before today. Does that mean you are resting finally now?

MR. CASTIELLO: Resting finally.

MR. BROWN: Mr. Rayzor, will you take the stand, please.

J. NEWTON RAYZOR, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By MR. BROWN:

Q. Please state your full name to the reporter.

A. J. Newton Rayzor.

Q. You are an attorney at law, admitted to practice in the courts of the State of Texas and the Supreme Court of the United States?

A. Yes, sir.

Q. You have been practicing in Houston, Texas, about how many years, Mr. Rayzor?

A. About twelve years. I have been practicing longer than that, about fourteen or sixteen years, altogether.

Q. You are one of the senior members of the firm of Royston & Rayzor, in Houston and Galveston?

A. One of the members.

Q. In the past have you represented Southern Steamship Company?

A. Yes, represented that company in specific cases. I have never been retained by the company, but on a case basis, since 1925.

Q. Now, when you speak of "I" or "me" you refer also to your firm?

A. That is correct. I represented the company before organization of the firm of Royston & Rayzor, and since then the firm has represented them in specific instances.

Q. Now, in a very brief way, the usual type of case handled by the firm for the Southern Steamship Company is what?

A. Personal injury, collision cases, some cargo claims.

Q. And in those instances the firm is acting on behalf of the owners and any other person?

A. Many of those instances the firm acts on behalf of the underwriters; in some instances on behalf of the owners.

Q. Has the firm ever been delegated any general authority to handle matters for the Southern Steamship Company as the firm might see fit?

A. No, sir.

Q. What about instructions in the handling of cases, are they received or not?

A. Yes, instructions in each instance are received from the Philadelphia office or from the brokers, insurance brokers, through the Philadelphia offices, as the case might be.

Q. Now, as far as the labor relations between the Southern Steamship Company and the unlicensed members of the crews of their vessels, what is the first occasion that the firm or yourself had to deal with that on behalf of Southern?

A. I don't recall another instance in which we have acted in a dispute between the personnel, unlicensed and licensed personnel, or the personnel and the company, than the one concerning which I have heard Mr. Mandell testify this morning.

Q. On what date was it that you were first called into that?

A. July 18, 1938.

Q. You heard Mr. Mandell testify here, did you not?

A. Yes, sir.

Q. About the conversation that you had over the telephone with him?

A. Yes, sir.

Q. About what time of day would you say that took place?

A. That conversation occurred between 5:30 and 6:00 o'clock in the afternoon of July 18.

Q. Now with respect to that time when had you first been consulted with reference to this, with reference to labor matters?

A. My recollection is it was right around 5:00 o'clock.

Q. By what means did you receive those inquiries?

A. My recollection is Mr. Shreider called me a few minutes before, or about 5:00 o'clock, and that I waited

with some two of my partners at the office until they came up from the dock, and they got there shortly before 5:30, or approximately 5:30.

Q. Did you before calling Mr. Mandell have any occasion to call any other person regarding this matter?

A. I talked to Philadelphia.

Q. Whom did you talk to there?

A. Talked to Mr. Sherry.

Q. Was there anything said by Mr. Sherry in your conversation with him about the authority of yourself or Mr. Shreider, or both of you, in handling this matter?

A. Yes, sir.

Q. What was it?

A. Mr. Sherry—I don't believe I will answer that question. I am put in a funny position here, sitting in as an attorney for a company that has claimed a privilege, and I assume I am duty bound to claim the privilege.

Q. You claim the privilege with regard to the conversation between you and Mr. Sherry?

A. I don't claim the privilege with regard to that conversation, don't mind testifying on it.

TRIAL EXAMINER SEAGLE: Well, my recollection is Mr. Childs, at the last session of the hearing in Philadelphia, did not commit himself as to whether or not the company would assert any privilege in connection with any question that might be put to you here. He said he would take the matter under consideration. There was some discussion about it. Now my question to you is, have you received any instructions from Mr. Childs with reference to the matter?

THE WITNESS: Mr. Examiner, I have refused to deal with Mr. Childs in this matter in view of the fact I was to be called as a witness and I especially requested Mr. Brown to carry on the conversation with Mr. Childs.

TRIAL EXAMINER SEAGLE: Have you received any instructions from Mr. Childs?

MR. BROWN: We have received instructions from Mr. Childs in the form of a letter in which he advised that Mr. Sherry claimed privilege on all confidential matter, and instructed me to assert it.

THE WITNESS: I don't want to put myself in the position of violating any confidences of this company.

MR. CASTIELLO: Here is the position I have to take in that matter, since your client asserts the privilege and you are also not going to testify, I now move to strike any testimony concerning the purpose of that call, since it is in evidence that Mr. Sherry told this man that he had no authority. Now that should be stricken from the record altogether. We either get the whole conversation or we don't get any.

THE WITNESS: Well, Mr. Sherry has testified about my phone conversation? Is that in the record?

MR. BROWN: He has, I believe.

TRIAL EXAMINER SEAGLE: He did give some testimony, I don't recall the specific details. He did testify as to having a conversation with you, my recollection is he did report some of the detail. Now if you assert the privilege I think I should be bound to strike from the record——

THE WITNESS: If he has testified about the conversation I won't assert the privilege.

TRIAL EXAMINER SEAGLE: It seems to me that he has in effect waived the privilege.

THE WITNESS: I agree with you.

TRIAL EXAMINER SEAGLE: However, before making that statement formally in the record I would like to look at the testimony.

THE WITNESS: If counsel says it is correct I am willing to accept it.

TRIAL EXAMINER SEAGLE: Is that your recollection, Mr. Sherry did testify as to what the conversation was?

MR. BROWN: Yes, sir.

TRIAL EXAMINER SEAGLE: Then if that is so, then the privilege has been waived.

THE WITNESS: Yes, sir. Well, he talked to me.

Q. What did he say?

A. He instructed me emphatically not to negotiate with anybody and not to enter into any agreement of any kind or character whatsoever.

Q. Now in that conversation did you anticipate that you would talk later to Mr. Mandell?

A. I did.

Q. You so advised Mr. Sherry?

A. I did.

Q. You did talk to Mr. Mandell?

A. Yes, sir.

Q. In your conversation with Mr. Mandell, did you make any statement to him about your authority in the matter?

A. Mr. Brown, I would rather state a little more fully my conversation with Mr. Sherry.

TRIAL EXAMINER SEAGLE: Suppose you tell us the whole conversation.

THE WITNESS: If I may be permitted to do so. There isn't any doubt in my mind but what Sherry instructed me, and in my presence on one end of the phone, Shreider, not to make any agreement of any character nor to negotiate or attempt to negotiate any contract with the N. M. U. I told Mr. Sherry in that telephone conversation that I was going to talk to Mr. Mandell to see if I could get this vessel released, and in pursuance to that statement I did talk to Mr. Mandell. I told Sherry—no, the next conversation I had with him was after my conversation with Mandell.

Q. In your conversation with Mandell did you state anything to him about your authority in the matter?

A. In my conversation with Mr. Mandell I asked Mandell if he could not intercede and if we couldn't get that vessel released to sail, that the company was anxious to sail the ship. He told me that the delegate had not been permitted to board that vessel. I told Mandell that we did not want to engage in a lot of litigation, have a lot of trouble in trying to get that ship out of here, but I thought we could do it if we had to, didn't know how much delay there would be involved, but I would like to see the crew come off the sit-down strike and sail the ship. I told Mr. Mandell in no uncertain terms that if he could talk to those fellows and get them to go back to work, go ahead and sail the ship, that I would recommend to the Southern Steamship Company that delegates here be permitted to come aboard the Southern vessel at such time and places as might suit the convenience of the company. Subsequently I talked to Mr. Mandell and was advised both by Mandell and the company that the men were going to sail the ship.

Q. That was the same evening?

A. The same evening. In the course of the conversation with Mandell I advised Mr. Mandell that I knew nothing about the controversy, that I had no authority to attempt to negotiate with him on a contract, nor discuss matters that touched recognition of the Union. My recollection is fairly clear that Mandell and I were at one, that the only issue was whether or not delegates should be issued passes to come aboard those ships, which I agreed to recommend.

Q. Did you make any agreement to do anything else in your conversation with Mandell, other than to recommend passes issued to delegates?

A. No, that is the only issue that we discussed, and subsequently Mr. Mandell came to the office the following day. I told Mr. Mandell in a professional way where I stood, and we discussed ıe Labor Relations Act, I think with reference to some other matters.

Q. Now, in that conversation that you had with Mr. Mandell on July 18 do you recall whether any mention was made about this so-called appeal before the National Labor Relations Board?

A. Well, something was said about it; something was said. I know we knew nothing about it. Mandell was not so clear about it. Somehow, some way, some information came to us that there was some kind of an appeal, that it was said that matters should be allowed to rest until that thing was over, and that nothing should be done to interfere with the orderly procedure of that appeal, or words to that effect.

Q. As a matter of fact, did you have any exact knowledge at all about the status of the thing?

A. Had none at all.

Q. Now, Mr. Rayzor, you have heard Mr. Mandell's testimony as to the words he recalls you used, from which he says he inferred that you were making an assurance that the men would not be discriminated against or fired at the end of the trip at Philadelphia. First, do you recall having said the things that he recalls that you did say?

A. Mr. Brown, as near as I can recall our conversation, I told Mandell that I believed with some difficulty we could replace that crew, that it would probably require court action and a lot of inconvenience, and would involve a loss to everyone, but the sensible thing to do was for those men to go back to work, on my statement to Mandell that I would recommend to the company that passes be issued to the delegate. Now as far as what has happened when they got to Philadelphia, there wasn't one word said by me as far as I recall, and my friend, Mandell, did not say a word. What he had in his mind I don't know.

Q. Did you have in your mind from the words he said that you used, that the company was making any assurances, or that you were on behalf of the company making any assurances that there would be no discrimination

against these men for participating in this so-called sit-down strike?

A. Mr. Brown, I had in mind getting the ship away from here and fulfilling my promise to Mr. Mandell, and I stated to Mandell that I had no authority to conclude any contracts, and the matter would have to be handled in Philadelphia.

Q. Did you, as a matter of fact, have any authority to make any assurance that no disciplinary action of any kind would be taken against any member of the crew of the "Fort Worth" on arrival in Philadelphia, or any other time?

A. No, I had no authority to make such a contract.

Q. Did you purport in your mind to make such a contract?

A. I have stated to you what I have stated to Mandell, and the very thing you are talking about never occurred to me.

Q. Now, then, you did subsquently advise Mr. Mandell substantially as he has testified here, as to the final word?

A. Yes, sir.

MR. BROWN: That is all.

CROSS-EXAMINATION.

By MR. CASTIELLO:

Q. Mr. Rayzor, you do know that the company, the Southern Steamship Company, has never retained either on a period basis or a case basis any law firm in this locality except your own?

A. No, I can't say that. They did once or twice. They took the business away from us once or twice.

Q. But as a general proposition you are retained, are you not?

A. I would not say retained, counsel. I will say that since 1925 our firm, and myself prior to the organization of the firm, or the firm after its organization, has acted in every instance for the Southern Steamship Company, except perhaps one or two cases.

Q. Has there ever been before this occasion, the occasion of July 18, any other matter involving a labor dispute or labor relations in which the Southern Steamship Company was involved in this locality?

A. Yes.

Q. There have been?

A. Other than with seamen?

Q. No, just with seamen.

A. Not that I know of, no, not that I know of.

Q. Now, in your conversation with Mr. Sherry, of July 18, tell me exactly how your authority was limited in this matter?

A. In my conversation with Sherry he emphatically instructed me not to make any kind of agreement with reference to the recognition of the Union, not to carry on any negotiation looking towards a contract with the Union, or that might be construed as a recognition, or looking forward to a recognition of the Union. I told Mr. Sherry in my subsequent conversation, I am not so sure but what in the first conversation, that I was going to recommend to the Southern Steamship Company, in consideration of Mandell interceding to release this ship, that they issue passes to the delegates at suitable times, and Sherry told me that he didn't know whether the company would agree to it or not. I told him I was going to recommend it and insist upon it.

TRIAL EXAMINER SEAGLE: You say you told that to Mr. Sherry?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: In the conversation you had with him before you spoke to Mr. Mandell?

THE WITNESS: I can't say whether it was the first or second conversation. I am inclined to think it was the second conversation.

TRIAL EXAMINER SEAGLE: Did you have two conversations with Mr. Sherry on July 18?

THE WITNESS: My recollection, the first conversation was held about 5 o'clock.

TRIAL EXAMINER SEAGLE: Before you spoke to Mr. Mandell?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: When was the second conversation?

THE WITNESS: I am not so sure whether the second was that afternoon or the next day. My mind is not clear on it, but I can assure you that I told Mr. Sherry that I was going to recommend, if Mandell either would or did release that ship, that passes be issued to the delegates, and Sherry told me that was a matter he could not speak on, didn't know whether the company would agree to it or not, the whole business would have to be handled in Philadelphia, and while Sherry did not tell me not to do that, he emphatically told me not to enter into any agreement or negotiation with the N. M. U. I recall that I advised Mr. Mandell that I had no authority in that regard.

TRIAL EXAMINER SEAGLE: You mean by that, Mr. Sherry did not tell you to make no statements as to recommendations as to issuance of passes to delegates?

THE WITNESS: I told Mr. Sherry, your Honor, that we were here on the ground and that I figured that was a sensible recommendation for me to make, and that I was going to make it.

By MR. CASTIELLO:

Q. Why do you think it was sensible?

A. What I thought? The recommendation I told him I would make?

Q. I say, why did you think it was a sensible recommendation?

A. Well, I figured that trading a ship that is tied up in a sit-down strike, that the recommendation I could conscientiously make was a pretty good recommendation.

Q. As a matter of fact, didn't you honestly believe the Union was entitled to passes for its delegates?

A. I am not going to answer that question.

MR. BROWN: We object to that. It is a matter of law, and his belief would have no force here. It has no material bearing so far as the record is concerned. It is a matter for brief and argument, and I object to it.

MR. CASTIELLO: Certain courses of action were taken in this matter because of the conversations had between the attorneys, not merely questions of law, but questions that actually go to the heart of this matter. Now, if Mr. Rayzor can, and I am sure he would enlighten us, I think we are entitled to inquire into this matter.

MR. BROWN: There is no disagreement as to what he said he would do. That is an admitted fact. He said he would recommend the issuance of the passes to delegates.

TRIAL EXAMINER SEAGLE: Well, I think the reason would also be of interest. The objection is overruled.

THE WITNESS: Read the question to me, please, sir.

(Question read.)

A. You are asking me whether that was my opinion, as a matter of law?

Q. As a matter of law and as a matter of background for your knowledge of this matter since you knew the Union had been certified.

MR. BROWN: I object because it assumes he did know that.

A. I would have to state to you I can't answer that question.

TRIAL EXAMINER SEAGLE: That is not the question.

Q. You cannot answer?

A. No, sir.

MR. CASTIELLO: That is all.

TRIAL EXAMINER SEAGLE: Is that question withdrawn?

MR. CASTIELLO: Yes.

THE WITNESS: I can't answer.

Q. Did you tell Mr. Mandell that you agreed with him that the union was entitled to represent persons aboard the ships of the company?

A. I told Mr. Mandell that I would recommend to the company that they issue passes to the delegates who came aboard at convenient times.

Q. Because you believed that the union was entitled to go aboard?

A. Are you asking me if I told Mandell that? Is that the question?

Q. Oh, no. You told Mr. Mandell you would recommend the issuance of the passes?

A. That is correct.

Q. I am asking you, isn't it a fact that the reason you told him that you would recommend the issuance of the passes was because you believed that the union was entitled to recognition and the issuance of the passes?

MR. BROWN: Same objection.

A. I will tell you exactly the way I told it to Mr. Sherry.

Q. Now, please answer the question.

A. I am going to answer it, that that offered a practical solution for a very difficult situation.

Q. Was it merely a solution for the moment?

A. Counsel, I made the promise with reference to that recommendation in good faith to Mr. Mandell.

Q. I am not questioning your good faith, don't misunderstand me. Now, according to your testimony, your authority was specifically limited not to make any contract with the N. M. U. or to negotiate with them in any manner, is that proper?

A. No, it is not.

Q. Tell me again what your exact authority was?

A. Sherry advised me, instructed me specifically not to attempt to negotiate any contracts or to do anything that would bind the company in any way to what might be considered a recognition of the N. M. U., or doing something leading ultimately to recognition of the N. M. U., but the matter would be handled entirely in Philadelphia, and that we were to leave it alone. Now, the other——

Q. Just hold that. Did Mr. Sherry give you the reasons why you were not?

A. No.

Q. Did not?

A. No.

Q. Mr. Sherry did not tell you, did he, that you had no authority to tell Mr. Mandell, in effect, that the strikers would not be discriminated against?

Mr. Castiello: Now, that can be answered categorically, Mr. Examiner. (Addressing the witness.) I beg for you to do so.

The Witness: Read the question.

(Question read.)

A. That question was not discussed. Now, I can complete that answer if you want me to.

Q. What is that?

A. I can explain the answer.

Q. Surely, go ahead.

A. He rather resented my having anything to do with this.

Q. Who did?

A. Mr. Sherry. He negatived all my thoughts, and we had quite a combat over the telephone and when I told him that I was going to do this because my good judgment dictated, and I was taking my chances in working it out this way, he said, "Well, that is up to you, but I am telling you now, you have no authority to act for this company," and I was pitting my judgment against Mr. Sherry.

Q. Was this before your conversation with Mr. Mandell?

A. That was, yes. We talked 30 or 40 minutes.

Q. So, with no authority whatsoever, you present yourself to Mr. Mandell and presumed to act?

A. No.

Q. Well, how were you able to negotiate a settlement of the strike if you had no authority?

A. I did not try to negotiate a settlement.

Q. Well, you did, didn't you?

A. No.

Q. Wasn't one of your fixed purposes to effect the release of that ship?

A. It was my purpose to see Mr. Mandell intervene and secure a release of the vessel.

Q. How did you anticipate Mr. Mandell would effect the release of that ship if you had no authority on the part of the company to give him some consideration?

A. Well, for 14 long years we have——

Q. Now, please answer my question.

A. I am answering the question. For 14 long years we represented that company, and I figured we had as much standing in that firm, as Mr. Sherry, and this is the first instance of this sort that has ever arisen, and for your own information, in making my recommendation, it did not go to Mr. Sherry.

Q. You mean the recommendation as to passes?

A. Yes, sir.

Q. To whom did you make the recommendation?

A. The president of the Southern Steamship Company.

Q. Who is that?

A. Mr. McKinney.

Q. And did he turn it down?

TRIAL EXAMINER SEAGLE: What is his full name?

THE WITNESS (addressing Mr. Castiello): That I cannot say. (Addressing Trial Examiner Seagle.) Dr. W. B. McKinney.

MR. CASTIELLO: The stipulation of the Board on the business of the company contains his name.

THE WITNESS: That I can't answer, Counsel.

Q. Frankly, it is incredible to me, and perhaps you can explain this in a reasonable manner, how were you able to even attempt to negotiate the settlement of this strike if you had no authority to act?

A. Counsel, we have been very close to the Southern Steamship Company here, as I said, for 14 years, and personally, Mr. Sherry gave me such a dressing down over the telephone about authority, that as I have stated to you, I told Sherry that if I could settle with Mandell on that basis that I was going to make the recommendation, and Sherry warned me that I had no authority to do that, even, but I took, according to the old Texas expression, "the bull by the horns" and did it anyway.

Q. You won't have us believe, will you, that you told Mr. Mandell that you had no authority even to make a recommendation and on that basis he released the ship?

A. I have not testified that, Counsel. I have always got authority to make a recommendation.

Q. Well, you just told us that Mr. Sherry said you didn't have authority to make the recommendation?

A. You misunderstood me. I didn't testify to that.

Q. Well, I beg pardon, you did.

A. I want to correct it if I did. I testified that Sherry told me if I made that recommendation there was no assurance the company would accept it, and he told me he

would not, but I figured that Sherry was not the determining factor up there, never has been.

Q. You did not speak to Mr. McKinney before you spoke to Mr. Mandell, did you?

A. Tried to get him, tried to get him on the telephone, called him at home, but couldn't get him.

Q. As far as you were concerned, Mr. Sherry, the marine superintendent, was actually speaking for the company, and he told you that he would give you his assurance that even if you did make the recommendation it would not be followed.

A. That is practically what he said.

TRIAL EXAMINER SEAGLE: Did he say that before you spoke to Mr. Mandell?

THE WITNESS: Yes, sir; that was in the first conversation.

TRIAL EXAMINER SEAGLE: You already knew that, Mr. Sherry told you that under no circumstances would he accede to such a request?

THE WITNESS: That he personally, and he didn't know even that the company would approve it. That is my recollection.

By MR. CASTIELLO:

Q. Do you believe, Mr. Rayzor, that Mr. Mandell would have recommended the settlement of this strike if he actually knew that your recommendation would not be followed?

A. Do you want me to guess at that?

Q. No, I am asking you, using your testimony as a basis.

A. I believe that if I had detailed my conversation with Mr. Sherry at great length, and told Mr. Mandell that I was not going to be satisfied with that, I was going directly to Dr. McKinney with an unequivocal recommenda-

tion, my guess is Mandell would have gone right ahead. Now, I am guessing.

MR. CASTIELLO: Yes, I am sure you are.

TRIAL EXAMINER SEAGLE: Before we leave this matter, Mr. Rayzor, I want to ask you this: Did you say anything to Mr. Mandell in your conversation with him as to what Mr. Sherry had said?

THE WITNESS: No.

TRIAL EXAMINER SEAGLE: You did not tell him that Sherry said as far as he was concerned he would never accede to a request to issue passes?

THE WITNESS: I don't believe I testified that Sherry said that. I think Sherry told me he would not approve such a thing and didn't know whether the company would or not.

TRIAL EXAMINER SEAGLE: Anyway, you never said anything to Mandell about what Sherry had said?

THE WITNESS: No, sir.

TRIAL EXAMINER SEAGLE: Didn't you think he would be interested in that?

THE WITNESS: If your Honor wants me to look over my hind sights and answer that, I don't believe he would. I think Mr. Mandell realizes we are close enough to most of our clients, our recommendations are followed, with rare exceptions. He never does question us, except on the rarest sort of occasion.

TRIAL EXAMINER SEAGLE: With whom do you normally deal?

THE WITNESS: Of the Southern Steamship Company?

TRIAL EXAMINER SEAGLE: Yes, in the Southern Steamship Company.

THE WITNESS: Well, occasionally when Dr. McKinney comes down here we deal with him. With reference to ordinary grist of the mill, we go through the office of a lady there, at the office in Philadelphia.

By MR. CASTIELLO:

Q. That lady is Mr. Sherry's secretary, is she not?

A. Used to be Mr. Delanoy's secretary. I don't know whether she is Mr. Sherry's secretary or not.

Q. As a matter of fact, Mr. Sherry is, so to speak, the Southern Steamship Company in Philadelphia, is he not?

A. The first time I ever dealt with him was on this occasion, Counsel.

Q. In labor relations matters?

A. I say, this is the first time I ever dealt with him.

TRIAL EXAMINER SEAGLE: How did you come to call him up on this occasion?

THE WITNESS: I tried to get Dr. McKinney himself, and Shreider called him from my office.

TRIAL EXAMINER SEAGLE: Shreider called Sherry?

THE WITNESS: Yes, from my office.

By MR. CASTIELLO:

Q. Did it ever occur to you in your conversations with Mr. Mandell before the ship was released that these strikers would be discharged when they got to Philadelphia?

A. I did not give any thought to that.

Q. When you told Mr. Mandell, "Let's release the ship, let the men go back to work, let them go to work and stay at work," or words to that effect, what else could you have had in mind but that the men would not be discharged?

A. I had this very clearly in my mind, Counsel. As I stated a moment ago, I told Mr. Mandell that probably we could get another crew, it would involve a lot of loss and inconvenience to everybody, the sensible thing to do was to call off the strike, let the men go back to work and sail the ship. Now, I can't enlarge on that. That is all I said.

Q. I am attempting to get your understanding from your word. Certainly you must have had an understanding about the continued employment of these strikers?

A. What do you mean, an agreement about the continuous employment?

Q. Yes.

A. I have stated to you all I stated to Mr. Mandell on that particular point.

Q. You don't believe, do you, that Mr. Mandell understood that the men would not be kept continually at work, that he would allow the ship to sail?

A. I don't think I should be called upon to answer that. I can't read his mind.

Q. Well, how about your own mind on that, at the time, of course?

A. You want me to guess at it?

Q. No, I am not trying to probe your mind.

A. I told you, that is what I stated. Now, if you want me to tell you what I think actually existed up in the thin atmosphere, I can tell you.

Q. Well, it was more than thin atmosphere. It was the release of that entire ship, wasn't it?

A. I agreed to make this recommendation as the consideration for Mr. Mandell's intervention, and I made the recommendation.

Q. Were you ever apprized of the fact that five men were discharged when the "Fort Worth" reached Philadelphia?

A. As I recall, the first I heard of that was when Mr. Brown advised me of it a couple or three weeks ago.

Q. You mean just three weeks from today?

A. Yes, sir.

Q. And you never heard about that discharge before that time?

A. Counsel, after I made my recommendation we have heard nothing further from this case until about three weeks ago something was said about taking my testimony,

and as I recall, it was Mr. Brown, or it may have been Mr. Mandell, who said something to me about some men being discharged.

Q. Well, you did hear before this time that the recommendations had been turned down?

A. Oh, I passed that along to Mr. Mandell as soon as I got it.

Q. So three weeks ago was not really the first time you heard anything since the time you made your recommendation?

A. Well, when I said "made the recommendation" I wanted you to give me enough allowance to get an answer back. To that extent I correct my answer.

Q. Did it surprise you when you heard that men were discharged for the action they took on the 18th?

A. I can't answer that.

Q. Did you think it was the logical thing that would happen?

A. You would have to compel me to answer that question because I don't think that an attorney should be called upon to do so, a man in my position.

Q. You were acting for the company in negotiating a settlement of this strike. Certainly you must have had a reaction, a mental one, when you heard the men were discharged?

A. I did not act for the company in negotiating any settlement, except to the extent I testified about, taking the bull by the horns in making this recommendation.

TRIAL EXAMINER SEAGLE: How did you make this recommendation, to Mr. McKinney direct?

THE WITNESS: Yes, sir.

TRIAL EXAMINER SEAGLE: Did you make the recommendation by writing a letter or calling him up?

THE WITNESS. A letter.

TRIAL EXAMINER SEAGLE: Did you ever get an answer to that letter?

THE WITNESS: Over the telephone from Mr. Childs.

TRIAL EXAMINER SEAGLE: You never got anything in writing from Mr. Childs or the company, with reference to the recommendation?

THE WITNESS: Mr. Childs telephoned.

TRIAL EXAMINER SEAGLE: My question was, did he confirm that telephone conversation by letter?

THE WITNESS: I can't answer that. I don't remember. I don't believe he did.

By MR. CASTIELLO:

Q. What did Mr. Childs tell you in that conversation, relative to your recommendation?

MR. BROWN: We claim privilege on that, certainly a conversation between two attorneys for the company.

MR. CASTIELLO: They are not attorneys but clients.

MR. BROWN: Counsel for the Southern Steamship Company.

MR. CASTIELLO: You are merely counsel for the steamship company——

TRIAL EXAMINER SEAGLE: Read the question.

(Question read.)

TRIAL EXAMINER SEAGLE: I don't see how that is privileged. Mr. Rayzor has testified as to making this recommendation and having received an answer which came from Mr. Childs. I don't see any privilege about that statement.

MR. BROWN: It is necessarily privileged if it came from counsel for the company.

TRIAL EXAMINER SEAGLE: This was in answer to a request by Mr. Rayzor, and in accordance with the

understanding was to be transmitted to Mr. Mandell. Consequently it could not have been a secret communication or confidential communication of any kind. It was intended to be made public.

MR. BROWN: The results may have been intended to be made public.

TRIAL EXAMINER SEAGLE: That is what the question calls for.

MR. BROWN: I thought he was detailing the conversation.

MR. CASTIELLO: I want to detail the conversation. I know the result. The result is the recommendations on file. I think we are entitled to know what the reasons are.

MR. BROWN: I think not. That involves what Mr. Childs had in his mind, his impressions of the law, and other confidential business matters.

TRIAL EXAMINER SEAGLE: Is your question, what reason Mr. Childs gave to the witness?

MR. CASTIELLO: Yes.

TRIAL EXAMINER SEAGLE: For turning down the request?

MR. CASTIELLO: Well, Mr. Examiner, it seems to me the cloak of privilege cannot be partly worn. If he is going to claim privilege he has to be completely garmented with the cloak of privilege, but he can't merely cast it aside to give us the result that the recommendations were turned down, and then immediately place it on his shoulders and say, "I can't tell you more."

TRIAL EXAMINER SEAGLE: It doesn't seem to me that it would be proper to reveal a certain portion of the negotiations and refuse to reveal the others. I think you ought to answer the question.

A. He told me the recommendation had been turned down, the company would not accede to it.

Q. You asked him why, didn't you?

A. Well, I couldn't say categorically that I asked him why. I know Mr. Childs and I had a short conversation about the recommendation.

Q. Certainly you were curious enough to inquire the reasons for their turning down the recommendation?

A. No, I can't say I was curious enough. As I recall, Counsel, Mr. Childs told me that the company just simply did not agree that my judgment was right in the matter. I told him I didn't care whether they agreed or not, I thought it was right, and he said, "Well, they think otherwise," and that was the answer to it.

Q. And that was the conversation?

A. I won't say that is the exact words, but that was the sum and substance of it, and that is the last I heard of this controversy until either Mr. Brown or Mr. Mandell said something to me about taking my deposition, or we may have gotten a letter from Mr. Childs in the office about it.

MR. CASTIELLO: That is all.

MR. BROWN: That is all.

TRIAL EXAMINER SEAGLE: Do you recall whether in your telephone conversation with Mr. Mandell on July 18th, whether you told him that the crew of the "Fort Worth" was a good crew and you wanted to keep it on the vessel?

THE WITNESS: I don't recall using those exact words, no.

TRIAL EXAMINER SEAGLE: Do you deny using those exact words?

THE WITNESS: Well, I deny it in this way, by a restatement of my recollection of it. I stated, as I attempted to state before, I told Mr. Mandell it would be an incon-

venience to the company and the men, and I may have said in that connection, "Some of those men have been on there some time, it would work a hardship on them." I suggested that the men go back to work and sail the ship and I would make this recommendation to the company to issue the delegates here at Houston passes to go aboard the ship.

TRIAL EXAMINER SEAGLE: As I understand, you are giving your best recollection of the conversation. My question is a very specific one. Do you positively deny you made any statement that the crew was a good crew and you wanted to keep them on?

THE WITNESS: I can positively deny I ever said anything about wanting to keep any crew on any ship for any indefinite period of time or definite period of time.

TRIAL EXAMINER SEAGLE: But you said a moment ago, it would be a hardship. What did you mean, a hardship on the crew?

THE WITNESS: I told him over the phone it would be a hardship and inconvenience on the crew and the company. I told him I thought we could go out and get a crew, it probably would result in inconvenience of several days, and probably litigation.

TRIAL EXAMINER SEAGLE: Well, you had authority here to get a crew?

THE WITNESS: I did not.

TRIAL EXAMINER SEAGLE: Mr. Shreider did?

THE WITNESS: Mr. Shreider can answer that himself. I don't know.

TRIAL EXAMINER SEAGLE: You were present when Mr. Sherry had the conversation with Mr. Shreider?

THE WITNESS: I heard the conversation. He was on one phone and I was on the other.

TRIAL EXAMINER SEAGLE: Will you tell us what the conversation was?

THE WITNESS: As I talked with Sherry it was on an extension phone, and Shreider would dip his oar occasionally, and occasionally I would dip my oar.

TRIAL EXAMINER SEAGLE: I want to know just what Shreider said?

THE WITNESS: Sherry told him not to do anything, to leave it alone, and he instructed me to proceed in court. I told him I wouldn't do it, that I didn't think the court proceedings was the sensible way. If you want me to consider my instructions, I suppose the only instructions I had was to get ready to take the necessary legal action to get that ship loose, and that is why I was very positive in asserting that I was going to find some other way.

TRIAL EXAMINER SEAGLE: You have not answered my question. What did Mr. Shreider say in the conversation?

THE WITNESS: Mr. Shreider answered questions with reference to the local situation.

TRIAL EXAMINER SEAGLE: I want to know what Mr. Shreider said?

THE WITNESS: I couldn't recall all he said, to save my life.

TRIAL EXAMINER SEAGLE: You can't recall a single word?

THE WITNESS: Oh, yes.

TRIAL EXAMINER SEAGLE: Well, tell me as much as you can recall, what Mr. Shreider said?

THE WITNESS: Mr. Shreider told Sherry that the men were sitting down, that the captain had made them a speech and he joined with them and made them a speech, but they refused to budge, that they had left the fire room and the

engine room, the ship was not in position to protect itself, that the men refused to obey the master's orders, refused to obey the engineer's orders, they couldn't do a thing on earth with them. Mr. Sherry said, "Go back and talk with them again."

Shreider said, "There is no use for us to go back and talk with those men any more, they are not going to get off the ship, not going to return to their duty, and not going to obey anybody."

TRIAL EXAMINER SEAGLE: Are you sure Shreider said they were not going to get off the ship?

THE WITNESS: Yes, I am telling you what my recollection is of what Shreider said.

TRIAL EXAMINER SEAGLE: Do you know all the officers of the ship testified they were never ordered to get off the ship?

THE WITNESS: It doesn't matter what they testified. You asked me about Shreider's conversation.

TRIAL EXAMINER SEAGLE: Are you positive Shreider said the crew refused to get off the ship?

THE WITNESS: I am giving you my recollection of what he said, your Honor.

TRIAL EXAMINER SEAGLE: Are you positive Shreider said that?

THE WITNESS: Well, if I was not reasonably positive of it I would not testify to it under oath.

TRIAL EXAMINER SEAGLE: You are only reasonably positive. Are you absolutely positive?

THE WITNESS: I would say I am as positive of it as a witness can be of most anything they testify to. And he carried on a conversation at some length with reference to some matters on the ship.

TRIAL EXAMINER SEAGLE: Do you recall what he said concerning those matters?

THE WITNESS: Yes, said the ship was ready to sail, and there was some conversation about whether or not they would get the ship out that night, and some conversation about cargo.

TRIAL EXAMINER SEAGLE: You said Shreider told Mr. Sherry about the captain ordering the men——

THE WITNESS: No, I didn't say that. I said Shreider said he and the master had been before the men, maybe the chief officer, too, and had tried to reason with the men, talked with the men, but they were not going back to work, and Shreider said there was no use to go back down and talk to them any more.

TRIAL EXAMINER SEAGLE: Did Shreider say what the men said to the captain?

THE WITNESS: No. I think he said something about their having a spokesman.

TRIAL EXAMINER SEAGLE: Did he say anything about what their spokesman had said as to their reasons for going out on strike?

THE WITNESS: Not that I remember.

TRIAL EXAMINER SEAGLE: Any further questions?

MR. CASTIELLO: I have nothing further.

TRIAL EXAMINER SEAGLE: We will recess for a few minutes.

(Short recess.)

TRIAL EXAMINER SEAGLE: The hearing is adjourned until 2:45 p. m.

(Thereupon, a recess was taken until 2:45 o'clock p. m.)

AFTER RECESS.

(Whereupon, the hearing resumed, pursuant to recess, at 2:45 o'clock p. m.)

TRIAL EXAMINER SEAGLE: The hearing will come to order. Do you rest your case, Mr. Brown?

MR. BROWN: Mr. Examiner, we are finished with all the Houston testimony. There is no further testimony to take, and in view of the fact that our connection with the hearing and case as a whole has been in connection with the Houston testimony, merely for that purpose, I communicated with Mr. Childs during recess, and he advises me that he has no further testimony to offer, but that he did want the Board, rather, the hearing, to convene formally at a time convenient to the Examiner and the opposing counsel, in Philadelphia, because he would like the opportunity of making various motions to dismiss the complaint.

TRIAL EXAMINER SEAGLE: Well, it seems to me you can make any motions necessary here. I don't think I would be justified in reconvening the hearing, in view of the fact there is no testimony to be taken. Certainly it would impose an undue hardship upon opposing counsel. I can't see why you can't make any motion you wish to here.

MR. BROWN: Well, it is quite a burden to impose upon me, because my connection with the case, as the Court knows, is solely in connection with the developments of July 18th, and preparing for the taking of testimony today. What the position of the respondent is, what the legal defenses are, and their ground for refusal, I have no idea.

TRIAL EXAMINER SEAGLE: I believe Mr. Childs stated at the last hearing at Philadelphia that he had no additional testimony to be taken except what was to be taken here in Houston.

MR. BROWN: He wants to put into the record any formal motions.

TRIAL EXAMINER SEAGLE: Suppose we do this: I will state for the record he may have an opportunity to file any motion he wishes in writing, and it will be stipulated that motions may be transmitted to me, and I will rule on those motions in my intermediate report. That would give you an opportunity to make any motions you wish, and make it unnecessary to reconvene the hearing at Philadelphia. However, I think a time should be fixed within which those motions should be made. I should suggest a week.

MR. BROWN: The only thing I have to say on that is, how long does the reporter think it would take him to get the record up here?

TRIAL EXAMINER SEAGLE: Well, the record, I suppose, must be complete except for today's testimony.

MR. BROWN: Except for this testimony of today. I am well acquainted with this firm of reporters, and that is the reason I asked when the record would be ready. I want to send the record to Mr. Childs with my comment.

TRIAL EXAMINER SEAGLE (addressing the official reporter): How long before the transcript would be ready?

THE OFFICIAL REPORTER: The transcript of today's testimony will be in shape for delivery by Wednesday of this week.

TRIAL EXAMINER SEAGLE: How long would you say would be sufficient?

MR. BROWN: I should say ten days or two weeks.

TRIAL EXAMINER SEAGLE: Suppose we make it ten days.

MR. BROWN: All right.

MR CASTIELLO: And those motions when submitted will be made part of the record?

TRIAL EXAMINER SEAGLE: Yes, sir.

MR. BROWN: In my position you can understand the position I am in, I am carrying on in the absence of counsel,

and in following the suggestion of the Examiner that the motions be submitted in writing, I don't want to be in the position of waiving Mr. Childs' request for a formal reconvening of the hearing at Philadelphia if he feels it necessary.

TRIAL EXAMINER SEAGLE: We will say that these motions will have exactly the same effect as if made here at the hearing.

MR. BROWN: Yes, sir.

TRIAL EXAMINER SEAGLE: It is understood any motion which the respondent may have may be made within ten days of the close of the hearing by filing such motion in writing with the Examiner.

MR. BROWN: Yes, sir.

MR. CASTIELLO: Mr. Examiner, I have a motion to make. I move that the complaint be conformed to the proof. The purpose of this motion is not to substantially change the nature of the proceedings in any manner. It merely goes to such minor deficiencies in the complaint as disclosed by the evidence, such as dates, names and their spellings and minor defects of that nature.

TRIAL EXAMINER SEAGLE: Do you have any objection to that?

MR. BROWN: I should think that the only objection would come when and if a change is made, and perhaps submitted to us. All I do is to reserve on behalf of the respondent the right to object to any motion when and if made.

TRIAL EXAMINER SEAGLE: I understand that motion is intended to correct any errors which may already exist in the record. The motion does not specify any particular change.

MR. BROWN: Not knowing what changes they have in mind or what effect they might have I will reserve such

objections pending an opportunity to see the effect of the change.

TRIAL EXAMINER SEAGLE: The objection is overruled.

MR. BROWN: The Examiner understands that in the event regular counsel who handled the case for respondent insist upon a further formal hearing that they have a right to ask for it? I have not waived their right to ask for it.

TRIAL EXAMINER SEAGLE: Well, you won't be understood to waive any right they have, but as far as I am concerned the request as made has been denied. I thought you agreed to my proposition to file those later on.

MR. BROWN: I agreed that the suggestion is a good one. I think it will be fully satisfactory to Mr. Childs, but in agreeing that they have a right to submit written motions to the Examiner to become a part of the record I don't want to waive on their behalf the right to ask for a formal reconvening in Philadelphia for the purpose of presenting such motions as they see fit.

TRIAL EXAMINER SEAGLE: Well, if that is the request it is denied. I think you are here in court representing the respondent for all purposes. I understand the circumstance, however, under which you do so, and for that reason I have given you permission to file the motions. It seems to me that fully meets the requirement of the situation.

I wish to announce you have a right to have oral argument before the Board. However, if you wish to avail yourself of that it is necessary that you make written application to the Board, at Washington, D. C., within ten days.

If there is nothing further, the hearing is closed.

(Whereupon, at 3.20 o'clock p. m., January 9, 1939, the hearing in the above-entitled matter was closed, subject to the reservation hereinabove noted.)

BOARD'S EXHIBIT NO. 1.

Charge, Amended Charge, Complaint and Answer appears at page 59 of this appendix.

BOARD'S EXHIBIT NO. 2.

Order designating Trial Examiner appears at p. 82 of this appendix.

BOARD'S EXHIBIT NO. 3.

STIPULATION—THE BUSINESS OF THE COMPANY.

It is hereby stipulated by and between counsel for the Southern Steamship Company and counsel for the National Labor Relations Board that:

1. Southern Steamship Company, the respondent, is a Delaware corporation, having been incorporated on January 7, 1903. Its general offices are located at 1360 Broad Street Station Building, Philadelphia, Pennsylvania. The company has no subsidiaries.

2. The officers and directors are:

Officers

W. B. McKinney—President
T. A. O'Brien—Vice-President and General Manager
T. D. O'Brien—Traffic Manager
A. G. Plett—Secretary and Treasurer

Directors

W. B McKinney	John E. Craig
L. Parmelee	F. D. Mooney
V. K. Hull	F. C. Dumaine

3. The company owns and operates the following-named seven vessels with the gross tonnage as noted:

	Gr. Tons		Gr. Tons
City of Dallas	2559	City of Philadelphia	2674
City of Fort Worth	2606	San Antonio	2689
City of Houston	2609	West Texas	2686
		Wichita Falls	2559

The respondent does not own any piers. It operates from the Pennsylvania Railroad Pier at 46 South Wharves, in the City of Philadelphia, Pennsylvania, and from Municipal Dock No. 4, in the City of Houston, Texas.

4. The vessels owned by the company, above set forth, sail pursuant to the following fixed schedule:

Southbound from Philadelphia, Pennsylvania, to Houston, Texas, on Wednesday and Saturday of each week; and northbound from Houston, Texas, to Philadelphia, Pennsylvania, on Monday and Thursday of each week.

5. The vessels of the company carry miscellaneous freight cargoes which are conveyed to the piers by truck, lighter, and railroad. The loading and unloading of the vessels is done by stevedores in the employ of the respondent.

6. Outgoing (southbound) cargo is obtained from all of the states on the eastern seaboard and from the State of Ohio. Incoming (northbound) cargo is obtained in Arizona, Colorado, Louisiana, New Mexico, Oklahoma and Texas.

7. There are employed by the company approximately 843 employees.

8. The gross revenue of the company in 1937 was $1,991,351.81 and the gross average tonnage was approximately 341,581 tons in 1937.

Date: Nov. 28, 1938

ADAMS, CHILDS, MCKAIG & LUKENS
Counsel for the Respondent
JOSEPH F. CASTIELLO
Counsel for the National Labor Relations Board

BOARD'S EXHIBIT NO. 4.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

AMERICAN FRANCE LINE ET AL. (SOUTHERN STEAMSHIP COMPANY)

and

INTERNATIONAL SEAMEN'S UNION OF AMERICA

Case No. R-157

SUPPLEMENTAL DECISION ORDER AND CERTIFICATION OF REPRESENTATIVES

January 26, 1938

On July 16, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections [1] in the above-entitled case. The Direction of Elections directed that elections by secret ballot be conducted among the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on the vessels operated out of Atlantic and Gulf ports by 52 named companies, including Southern Steamship Company, Philadelphia, Pennsylvania. By a Supplemental Decision and Direction of Elections, issued September 17, 1937,[2] similar elections were directed to be held in nine additional com-

[1] 3 N. L. R. B., No. 7.
[2] 3 N. L. R. B., No. 7c.

panies. Supplemental or amended decisions have also been issued in this case on August 16, September 11, and November 10, 1937,[3] dealing with various matters which need not be set forth in detail here.

Pursuant to these Decisions and Directions of Elections, an election by secret ballot has been conducted under the direction and supervision of Elinore Morehouse Herrick, the Regional Director for the Second Region (New York City), on the vessels operated out of Atlantic and Gulf ports by Southern Steamship Company. On January 3, 1938, the said Regional Director, acting pursuant to Article III, Section 9, of the National Labor Relations Board Rules and Regulations—Series 1, as amended, issued and duly served upon the parties an Intermediate Report on the election.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible to vote	134
Total number of ballots cast	132
Total number of votes in favor of International Seamen's Union of America, or its successor, affiliated with the American Federation of Labor	4
Total number of votes in favor of National Maritime Union of America, affiliated with the Committee for Industrial Organization	73
Total number of votes in favor of neither organization	51
Total number of blank ballots	1
Total number of void ballots	0
Total number of challenged ballots	3

On January 7, 1938, Southern Steamship Company filed objections to the balloting and to the Intermediate Report. The objections of the company are that no representative of the company was permitted to observe the balloting on the S. S. City of Houston, one of the seven

[3] 3 N. L. R. B., No. 45; 43 N. L. R. B., No. 7b; and 4 N. L. R. B., No. 19, respectively.

vessels owned by the company. The Board has consistently held that in the absence of consent by the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives. The choice of representatives by employees should be made free from any interference or coercion by employers. The presence of an employer's representative at an election may prevent such a free choice, although no interference or coercion is intended by the employer. The Board has adopted means of conducting these elections whereby the interests of all parties, including the employer's, are adequately protected. Subsequent to the balloting on the S. S. City of Houston, the labor organizations named on the ballot agreed to permit a company representative to be present at the balloting on the remaining vessels of the company. Southern Steamship Company does not allege that the agents of the Board who conducted the election failed to conduct it in a proper manner or in conformity with the Board's requirements. The petition of the Southern Steamship Company that the ballot and Intermediate Report be set aside will, therefore, be dismissed.

ORDER

It is ordered that the petition of Southern Steamship Company be, and hereby is, dismissed.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that National Maritime Union of America, affiliated with the Committee for Industrial Organization, has been selected by a majority of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio oper-

ators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by Southern Steamship Company, Philadelphia, Pennsylvania, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, National Maritime Union of America, affiliated with the Committee for Industrial Organization, is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

BOARD'S EXHIBIT NO. 5.

POSTAL TELEGRAPH
THE INTERNATIONAL SYSTEM

Received at
248 South Front Street

Telephone Bell—Loc. 1420 Keystone—Main 9786
P6 38 NL-TD Houston Tex 18

1938 Jul 19 AM 6 18

Paul Pallazzi—

National Maritime Union 7 South St Phila—

Released Southern Ship on promise of company to meet with us Tuesday two PM to work out agreement on what basis passes are to be issued to NMU new delegates stop City of FtWorth sailed at eight PM—

R GURTOV.

BOARD'S EXHIBIT NO. 6.

August 18th, 1938

Mr. T. Cherry
Marine Superintendant
Southern Steamship Company
Pier 46 South
Philadelphia, Pa.

Dear Sir:

The National Labor Relations Board handed the decision to the National Maritime Union that they are to represent the seamen working on all ships coming under the jurisdiction of the Southern Steamship Company.

Will you therefore please get in touch with us so that we may work out an agreement as to wages, hours, etc.

Very truly yours,

Paul Palazzi, Agent Pro-tem
National Maritime Union
Port of Philadelphia

PP/eh
uopwa—#2
CIO

BOARD S EXHIBIT NO. 7.

SOUTHERN STEAMSHIP COMPANY
Direct Service
Philadelphia—Houston, Texas
Norfolk, Va.—Houston, Texas
PIER 46 SOUTH WHARVES

C. F. Sherry,
Marine Superintendent

Philadelphia, Pa.
August 23, 1938.

Mr. Paul Palazzi, Agent Pro Tem,
National Maritime Union, Port of Phila.,
Marine Building,
7 South Street,
Philadelphia, Pa.

Dear Sir:

In response to your letter of August 18th, we beg to state that until the existing dispute, arising out of the election on our ships, is settled by the National Labor Relations Board and the Courts, the question of an agreement with your organization is premature.

Very truly yours,

SOUTHERN STEAMSHIP COMPANY,
CHARLES F. SHERRY
Marine Superintendent.

CFS—th

BOARD'S EXHIBIT NO. 8.

Standard Form No. 14
Approved by the President
March 10, 1926

TELEGRAM

OFFICIAL BUSINESS—GOVERNMENT RATES

From National Labor Relations Board
Bureau—Fourth Region
Chg. Appropriation—National Labor Relations Board

December 27, 1938

Adams, Childs, McKaig and Lukens
700 Integrity Building
16th and Walnut Streets
Philadelphia, Pa.

Re. Southern Steamship Company, IV-C-541, Hearing will reconvene January 9, 1939, at 10 A. M., Federal Building, Houston, Texas.

N. L. R. B.—Fourth Region,
Joseph F. Castiello, Attorney.

Official Business
Government Rates
JFC:BJ

RESPONDENT'S EXHIBIT NO. 1.

IV-C.
5 Respondent's Exhibit No. One
Southern Steamship Co.
12-21-38 Holland

Christian and surname of each person	Capacity engaged
Joseph ~~Cassavas~~ Crassaras	Boatswain pronounced "Bosen"
Wm. Reeves	A.B. Able Seaman
John Pfuhl, Jr.	"
Joseph G. Warren	"
Henry Lathan	O.S. Ordinary Seaman
Wm. Godfrey Burns	"
John J. Tracey	Oiler
Edw. B. Hughes	"
Alexander Brain	F. M. Fireman
Elmer F. Sorgeson	"
Gordon Neeley	Wiper
Charles Holt	"
Edward W. Smith	M. B. Mess Boy

Resp Ex 1 ~~Extent~~
in evidence

I certify this to be a true copy of the original on file in my office.
Philadelphia, Pa. December 21, 1938

Acting U.S. Shipping Commissioner.

Form 705-A

SHIPPING ARTICLES

(R. S. 4612, as amended—U. S. C., title 46, sec. 713)

DEPARTMENT OF COMMERCE
BUREAU OF MARINE INSPECTION AND NAVIGATION
SHIPPING SERVICE

Notice is hereby given that Section 4519 of the U. S. Revised Statutes (U. S. C., title 46, sec. 577) makes it obligatory on the part of the master of a merchant vessel of the United States, at the commencement of every voyage or engagement, to cause a legible copy of the agreement (omitting signatures) to be placed or posted up in such part of the vessel as to be accessible to the crew, under a penalty not exceeding ONE HUNDRED DOLLARS.

ARTICLES OF AGREEMENT BETWEEN MASTER AND SEAMEN IN THE MERCHANT SERVICE OF THE UNITED STATES

Required by Act of Congress, Title LIII, Revised Statutes of the United States (U. S. C., title 46, chap. 18)

Name of Ship	Official No.	Port of Registry	Date of Register	Registered Tonnage		Horsepower of Engines (if any)
				Gross	Net	
City of Fort Worth	219248	Phila Pa	6/2/37	2606	1612	1500

Registered Managing Owner or Manager		Number of Seamen and Apprentices for Which Accommodation is Certified	Class of Ship
Name	Address (State number of house, street and town)		
Southern S.S. Co.	Broad St. Sta. Bldg, Phila Pa.	94	Steam

Office of the U. S. SHIPPING COMMISSIONER FOR THE PORT OF PHIL'A, PA. June 30, 1938

IT IS AGREED *between the Master and seamen, or mariners, of the* City of Fort Worth

of Philadelphia, Pa. *of which* A. G. Rudeen

is at present Master, or whoever shall go for Master, now bound from the Port of[1] PHILADELPHIA, PA, *to*

Southern Coastwise Ports

Phila Pa.

and such other ports and places ~~in any part of the world~~ Coastwise *as the Master may direct, and back to a final port of discharge in the United States, for a term of time no exceeding* 6 *calendar months.*[2]

exceeding 6 *calendar months.*[2]

11

GOING ON SHORE IN FOREIGN PORTS IS PROHIBITED EXCEPT BY PERMISSION OF THE MASTER

NO DANGEROUS WEAPONS[1] OR GROG ALLOWED, AND NONE TO BE BROUGHT ON BOARD BY THE CREW

SCALE OF PROVISIONS to be allowed and served out to the Crew during the voyage in addition to the daily issue of lime and lemon juice and sugar, or other anticorbutics in any case required by law

		Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Water	quarts	5	5	5	5	5	5	5
Biscuit	pound	1	1	1	1	1	1	1
Beef, salt	pounds			1¼		1¼		1¼
Pork, salt	pound		1		1		1	
Beef	pound			½		½		
Canned meat	pound	1			1			
Fresh meat	pounds	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Fish, dry, preserved, or fresh	pound							
Potatoes or yams	pound	1	1	1	1	1	1	1
Pickled fish or cheese	pound	½					½	
Tea	pint			½			½	
Beans	pint		½		½			
Rice	pint		½					½

		Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Coffee (green berry)	ounce	¾	¾	¾	¾	¾	¾	¾
Tea	ounce	⅛	⅛	⅛	⅛	⅛	⅛	⅛
Sugar	ounces	3	3	3	3	3	3	3
Molasses	pint	½		½		½		
Dried fruit	ounces	3		3		3		
Pickles	pint	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
Vinegar	[illegible]	[illegible]		[illegible]				
Corn meal	ounces	4				4		
Onions	ounces	4						4
Lard	ounce	1	1	1	1	1	1	1
Butter	ounce	2	2	2	2	2	2	2
Mustard, pepper, and salt sufficient for seasoning								

SUBSTITUTES

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half ounce of lime juce for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

When the vessel is in port and it is possible to obtain the same, one and one-half pounds of fresh meat shall be substituted for the daily rations of salt and canned meat; one-half pound of green cabbage for one ration of canned tomatoes; one-half pound of fresh fruit for one ration of dried fruit. Fresh fruit and vegetables shall be served while in port if obtainable. The seamen shall have the option of accepting the fare the Master may provide, but the right at any time to demand the foregoing scale of provisions.

The foregoing scale of provisions shall be inserted in every article of agreement, and shall not be reduced by any contract, except as above, and a copy of the same shall be posted in a conspicuous place in the galley and in the forecastle of each vessel.

And the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service to be duly performed the said Master hereby agrees to pay to the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the foregoing scale. And it is hereby agreed, that any embezzlement or willful or negligent destruction of any part of the vessel's cargo or stores shall be made good to the owner out of the wages of the person guilty of the same. And if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the Master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require.

It is also agreed that[3]

SUBSTITUTES

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half ounce of lime juice for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

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It is also agreed that[1]

IV C
54
Southern Steamship Co
FAIRHOLT
12-21-38

IN WITNESS WHEREOF the said parties have subscribed their names hereto on the days against their respective signatures mentioned.

(Signed) T. D. Randall, Master, of 5919 Shisler St., Phila Pa.
(Give address)

on the 20th day of June, 1925

The authority of the owner or agent for the allotments mentioned in these articles is in my possession.

Shipping Commissioner or Consular Officer.

The Shipping Commissioner or Consular Officer will sign if such authority has been produced and will strike out in ink if it has not

[1] Here the voyage is to be described and the places named at which the ship is to touch; or, if that cannot be done, the general nature and probable length of the voyage is to be stated, and the port or country at which the voyage is to terminate.

[2] If these words are not necessary they must be stricken out.

[3] Sec. 4608, R. S., prohibits the wearing of sheath knives on shipboard, and the Master informs the crew of this law.

[4] Here any other stipulations may be inserted to which the parties agree, and which are not contrary to law.

N. B.—This form must not be unstitched. No leaves may be taken out of it, and none added or substituted. Care should be taken at the time of engagement that a sufficiently large form is used. If more men are engaged during the voyage than the number for whom signatures are provided in this form, an additional form should be obtained and used.

Any Erasure, Interlineation, or Alteration in this Agreement will be void, unless attested by a Shipping Commissioner, Consul General, Consul, or Consular Agent, to be made with the consent of the persons interested

11—319

PARTICULARS OF ENGAGEMENT

Reference No.	Signature of Seaman	Birthplace (If foreign born insert NAT. to indicate naturalized seaman)	Age	Height Ft.	Height In.	Description Complexion	Description Hair	Number of Continuous Discharge Book	Serial Number of License or Certificate	In What Capacity	Wages per Month	Place and Date of Signing This Agreement — Place	Place and Date of Signing This Agreement — Date	Time at Which to Be on Board	Monthly — Amount
													1938 June 30	July 1	
1	Adolf Hedlund	Nor	41	5	7	Fr	Br	77062	133174	Mate	185			1	
2	Michael Kiernan	Ire	46	5	7	R.	Br	77973	121827	2d	165			1	
3	Wallace Holt	Ga.	28	6	1	Fr.	Br	78016	60367	2d	145			1	
4	Caleb Cape	N.J.	22	5	11	Dk.	Br	77446	E52263	Radio	120			1	
5	Jr Grossman	Italy	34	5	3	R.	Br	55870	A 76199 B 47215	Bsn	87 50			1	
6	Watts Dabon	Tex	55	5	10	Dk	Br	77894	A 25759 B 46423	AB.	75			1	
7	Wm Reeve	Scot	20	5	6	Fr	Br	53160	A 25945 B —		75			1	
8	John Pugh Jr.	Ga.	26	5	11	Fr	Br	87232	A 26373 B 46448		75			1	
9	Joseph G. Warren	Del	34	5	9	Fr	Br	55487	A 25798 B 46480		75			1	
10	Henry G. Latham	Ga	35	5	7	Fr	Br	79466	E50943	U.S.	57			1	
11	William Burns	Ga.	24	5	8	Fr	Br	86057	E144403		57			1	
12	C. T. Norton	Colo	20	5	4	R.	Br	79034	146820	Elec Engr	265			1	
13	Harry Caird	Scot	41	5	7	Dk.	Blk	76162	15 2332	Cook	185			1	
14	Lawrence Robinson	Va	21	5	5	Fr	Br	79627	106422	3d	165			1	
15	Arthur Taylor	N.J.	24	5	6	Fr.	Br	79030	103116	3d	145			1	
16	John J. Tracey	Ga.	33	5	9	R.	Br	85268	C 17618	Oiler	85			1	
	[illegible]		22	5	9	Fr		[illegible]	[illegible]		91			1	

14	[illegible]	Va.	21		5	D.	Ill.	14671	104422	3d	/	165	-			1
15	Arthur Taylor	N.J.	24	/	6	Ky.	/	79030	103116	3d	/	145	-			1
16	John J. Tracey	Ga.	33	/	9	R.	/	78568	C 17618	Oiler		85	-			1
17	Edward B Hughes	/	22	/	9	F.	/	76887	C 17083	/		85	-			1
18	Henry Ellerson	Va.	24	/	9	F.	/	79421	C 15423	/		85	-			1
19	Alexander A. Brown	Pa.	34	/	7	F.	Md	78523	C 16790	Fire		75	-			1
20	Elmer Ferguson	/	36	/	11	/	Ky.	15719	C 19404	/		75	-			1
21	Peter Rubis	Aust	49	/	10	F.	Gr.	78779	C 13741	/		75	-			1
22	Gordon Neeley	Pa.	32	6	8	R.	Pa.	15347	E 14078	Wiper		62	-			1
23	Charles C. Hall	Ohio	21	5	7	F.	/	76199	E 15318	/		62	-			1
24	Alfred Katzreiber	Aust not	53	/	6	/	/	7726	E 12156	Steward		115	-			1
25	Louis Gill	Spain not	44	/	6	Oh.	/	78584	E 17737	Cook		95	-			1
26	Frank Sheridan	Mass?	53	/	5	F	/	78892	E 17757	H. W.		60	-			1
27	Chas W. Smith	Pa.	14	/	5	/	/	78750	E 12482	/		52	-			1
28	Harry Turner	N.C.	10	6	5	Ky	/	76932	E 16[illegible]	Wiper		1¢		July 6		6
29	Paul H. Fiedler	Pa.	45	5	6	F	/	78994	E 17785	H. W.		1¢				6
30	Harry Haynes	Ohio	50	/	4	R.	/	13454	E 16484	Wiper		1¢				6
31	Edmund J. Hudson	N.C.	15	/	7	F.	/	21873	E 17844	/		1¢				6
32																
33																

PARTICULARS OF DISCHARGE

RELEASE

Address of Wife or Next of Kin	Conduct and Qualifications	Shipping Commissioner's Signature or Initials	Place, Date, and Cause of Leaving Ship or of Death: Place	Date	Cause	Time of Service: M	D	Total Wages Earned	Deductions	Balance of Wages Paid on Discharge	Date Wages Paid and Release Signed	We, the undersigned seamen do hereby, each one for himself by our signatures herewith given in consideration of settlements made before the shipping commissioner, release the Master and owners from all claims for wages in respect of this voyage or engagement, and I, the Master, do also release each of the undersigned seamen from all claims, in consideration of this release being given. (Signed)	Attestation of Shipping Commissioner	Reference No.
Carsten Bergen, Norway			Phila Pa	July 1928			25	54	30	174	July 6 1928	Odd Hellum		1
Peter Dublin Ire							25	137	50	107		M. Kiernan		2
Alex Clifton Heights Pa							25	120	20	100		Wallace Holt		3
Isabel Woodbury, N.J.							25	100	—	80		Adolf Lape		4
Santi Lussinpiccolo, Italy 807 Walden ave Homer Delmar, N.J.							25	72	90	20	52	Joe Crassovoy		5
Mary Chester, Pa 278 W. 34th							25	62	50	—	62	Watts Arbor		6
Ruth Moorestown, N.J.							25	62	50	5	57	Wm. Reeves		7
Edith Burlsons Wattsville, N.J.							25	62	50	18	44	John Pfahl		8
Mary Chester, Pa 864 No. 9th							25	62	50	20	42	Joseph F. Warren		9
Mary Chester, Pa 1460 No. 58th							25	47	50	15	32	Gregory A. Sutton		10
Minnie Chester, Pa 927 Spruce st							25	47	50	15	32	William A. Burns		11
Minnie Chester, Pa							25	220	50	50	170	Jos. A. Norton		12
Elsie Woodbury, N.J. 23 Ross Cove							25	154	50	50	104	Harry Paul		13
Wife Gloucester, N.J. 221 Warrington							25	137	50	60	77	Laurides, Robinson		14
Bro 2300 E. Julien Ave Chester, Pa							25	170	50	45	125	Arthur Taylor		15
Mary 1412 No. 17th Chester, Pa							25	70	50	20	50	J. Wm J. Tracey		16
							25	70	50	15	55	Edward B. Hughes		17
							25	70	50	25	45	Henry Efferson		18
							25	62	50	10	52	Alexander Brown		19
							25	62	50	20	42	Elmer Ferguson		20
							25	62	50	—	62	Peter Lucas		21
							25	57	50	10	47	Gordon Treeby		22
							25	57	50	10	47	Charles E. Holt		23
							25	95	50	60	35	Alfred Kuttreiber		24
							25	79	50	—	79	Louis Gill		25
							25	50	—	10	40	Frank Florian		26
							25	43	35	2	41	Edw. W. Smith		27
			Houston	14	m/c	9		14	—		14	Harry Turner		14
			✓	14	m/c	9		14	—		14	Carl St. Eichler		14
			✓	14	m/c	9		14	—		14	Harry Haggarty		14
			Phila Pa	25	m/c	70		14	—		14	Edmund Hagan		24

Elsie Woodbury, N.J.
Sis. 221 Warrington
Wife Gloucester, N.J.
Bro 2300 E. Julien Ave
Mother Phila Pa
200 1412 No. 17th
Mary Phila Pa
Pinkie Houston, Texas 76 15 Ave E
Pinkie Houston, Texas 149 Moore st
Caroline Phila, Pa 1230 Daly st
Wife Trenton Phila Pa
sister Etta 2524 Salmon st
Solomonsich Phila Pa
aunt Mag 76 Arch st
Dorothy Clifton Heights Pa
wife 2976 No. 19th st
Sara Phila Pa
same 55 N. 69th st
Josephine Sellwood Wash D.C.
None
sister Agnes 29 Commons st
Abbott Boston, Mass
wife 258 No. Daniel st
Ella Phila Pa
Sis. 5506 Montcalm st
Chas. Dallas, Texas
sisters 1711 W. Girard ave
H. J. Tracy Phila Pa
home 607 Evergreen st
San Gutonio, Texas
wife 423 Clinton Phila
Gertrude Carrington, N.J.

(5) Julien

Termination

John Joseph Griffin

Form 708

CERTIFICATE AS TO SHIPMENT OF SEAMEN

DEPARTMENT OF COMMERCE

BUREAU OF MARINE INSPECTION AND NAVIGATION

SHIPPING SERVICE

State of [illegible]

Port of [illegible]

On this 30th day of June, 1928, personally appeared before me, a Shipping Commissioner in and for the said port, A. J. Kinghan Master of S/S City of Fort Bragg, and the following-named seamen:

1	Odd Hellund	26		51		76	
2		27		52		77	
3		28		53		78	
4		29		54		79	
5		30		55		80	
6		31		56		81	
7		32		57		82	
8		33		58		83	
9		34		59		84	
10		35		60		85	
11		36		61		86	
12		37		62		87	
13		38		63		88	
14		39		64		89	
15		40		65		90	
16		41		66		91	
17		42		67		92	
18		43		68		93	
19		44		69		94	
20		45		70		95	
21		46		71		96	
22		47		72		97	
23		48		73		98	
24		49		74		99	
25		50		75		100	And others

[SEAL]

Severally known to me to be the same persons who executed the instruments attached (shipping articles), who, each for himself, acknowledged to me that he had read or had heard read the same; that he was by me made acquainted with the conditions thereof, and understood the same; and that, while sober, and not in a state of intoxication, he signed it freely and voluntarily, for the uses and purposes therein mentioned.

[illegible], U. S. Shipping Commissioner.

U. S. GOVERNMENT PRINTING OFFICE 11—8222

CERTIFICATES

Or Endorsements Made by Shipping Commissioners and Consuls

I HEREBY CERTIFY that the entries in the Discharge Books of seamen included in these articles agree with the applicable entries herein. Seamen holding Certs. of Identification were issued Certificates of Discharge form 718A.

(S) John J. Droste
acting Deputy
U. S. Shipping Commissioner.

CITIZENSHIP REQUIREMENTS (crew exclusive of licensed officers)

	Subsidized Passenger Vessels	Subsidized Cargo Vessels	Nonsubsidized Vessels
	Sept. 27, 1933, to Sept. 26, 1937, 80 percent Americans; Sept. 27, 1937, to Sept. 26, 1938, 85 percent Americans. From and after Sept. 27, 1938, 90 percent Americans. Aliens may be employed only in stewards department.	On and after Sept. 27, 1936, 100 percent Americans	On and after Dec. 25, 1936, 75 percent Americans
	Number	*Number*	*Number*
Native-born citizens			13
Naturalized citizens			4
First papers			1
Admissible aliens			1
Percentage (American citizens)	..... %	..... %	85 %

I HEREBY CERTIFY that the above statement as to the citizenship of the crew signed on these articles is true and correct.

(S) John Tilney Jr.
U. S. Shipping Commissioner.

	FOREIGN	NEARBY	COASTWISE
Shipped.	XX		
Reshipped.	27		
Total.	27		
Failed to join.			

	Deck	Engine	Stewards	Total
Officers				
United States (native)	1	3		4
United States (naturalized)	2	1		3
Men				
United States (native)	5	7	1	13
United States (naturalized)	2		2	4
Austrian		1		1
British	1			1
Chinese				
Danish				
Dutch				
Filipino				
French				
German				
Italian				
Norwegian				
Portuguese				
Russian				
Spanish				
Swedish				
Central American				
South American				
Others			1 cmp.	1
TOTAL	11	12	4	27

Percentage (American citizens)	..... %	..... %	100 %

I HEREBY CERTIFY that the above statement as to the citizenship of the crew signed on these articles is true and correct.

(5) John Tilney Jr.

U. S. Shipping Commissioner.

ATTENTION OF MASTERS ESPECIALLY INVITED

Agreement to Ship in Foreign Trade.

(R. S. 4511—46 U. S. C. 564) The master of every vessel bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the Republic of Mexico, or of any vessel of the burden of seventy-five tons, or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing, or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned:

(R. S. 4519—46 U. S. C. 577) The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew; and on default shall be liable to a penalty of not more than $100.

Penalty for Shipment Without Agreement.

(R. S. 4514—46 U. S. C. 567) If any person shall be carried to sea, as one of the crew on board of any vessel making a voyage as hereinbefore specified (R. S. 4511) without entering into an agreement with the master of such vessel, in the form and manner, and at the place and times in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than $200. But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed away himself without the knowledge of the master, mate, or of any of the officers of the vessel, or who shall have falsely personated himself to the master, mate, or officers of the vessel, for the purpose of being carried to sea.

Shipment in Foreign Ports Before Consuls.

(R. S. 4517—46 U. S. C. 570) Every master of a merchant vessel who engages any seaman at a place out of the United States, in which there is a consular officer, shall, before carrying such seaman to sea, procure the sanction of such officer and shall engage seamen in his presence; and the rules governing the engagement of seamen before a shipping commissioner in the United States shall apply to such engagements made before a consular officer, and upon every such engagement the consular officer shall endorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence and otherwise duly made.

(R. S. 4518—46 U. S. C. 571) Every master who engages any seaman in any place in which there is a consular officer otherwise than as required by the preceding section shall incur a penalty of not more than $100, for which penalty the vessel shall be held liable.

Shipment of Seamen in the Coasting or Nearby Foreign Trade.

(June 19, 1886, sec. 2—46 U. S. C. 646) Shipping commissioners may ship and discharge crews for any vessel engaged in the coastwise trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or owner of such vessel.

Wages.

(R. S. 4552—46 U. S. C. 644) The following rules shall be observed with respect to the settlement of wages:

First. Upon the completion, before a shipping commissioner, of any discharge and settlement, the master or owner and each seaman, respectively, in the presence of the shipping commissioner, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and the shipping commissioner shall also sign and attest it, and shall retain it in a book to be kept for that purpose, provided both the master and seaman assent to such settlement, or the settlement has been adjusted by the shipping commissioner.

U. S. GOVERNMENT PRINTING OFFICE 11—819

Portuguese				
Russian				
Spanish				
Swedish				
Central American				
South American				
Others			1 Cuban	1
TOTAL	11	12	4	27

TO THE FOLLOWING REQUIREMENTS OF LAW

(R. S. 4524—46 U. S. C. 591) A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

(R. S. 4530—46 U. S. C. 597) Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 4529 of the Revised Statutes: Provided further, That notwithstanding any release signed by any seaman under section 4552 of the Revised Statutes, any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require.

Discharge in Foreign Trade.

(R. S. 4549—46 U. S. C. 641) All seamen discharged in the United States from merchant vessels engaged in voyages from a port in the United States to any foreign port, or, being of the burden of seventy-five tons or upward, from a port on the Atlantic to a port on the Pacific, or vice versa, shall be discharged and receive their wages in the presence of a duly authorized shipping commissioner under this Title (R. S. 4501-4612), except in cases where some competent court otherwise directs; and any master or owner of any such vessel who discharges any such seaman belonging thereto, or pays his wages within the United States in any other manner, shall be liable to a penalty of not more than $50.

Discharge in Foreign Ports.

(R. S. 4580—46 U. S. C. 682) Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of any seaman for his own discharge, if it appears to such officer that said seaman has completed his shipping agreement or is entitled to his discharge under any act of Congress or according to the general principles or usages of maritime law as recognized in the United States, such officer shall discharge said seaman, and require from the master of said vessel, before such discharge shall be made, payment of the wages which may then be due said seaman; but no payment of extra wages shall be required by any consular officer upon such discharge of any seaman except as provided in this Act.

Arbitration Before Shipping Commissioner.

(R. S. 4554—46 U. S. C. 651) Every shipping commissioner shall hear and decide any question whatsoever between a master, consignee, agent, or owner, and any of his crew, which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall, in any legal proceedings which may be taken in the matter, before any court of justice, be deemed to be conclusive as to the rights of the parties. And any document under the hand and official seal of a commissioner purporting to be such submission or award shall be prima facie evidence thereof.

RESPONDENT'S EXHIBIT NO. 3.

July 26, 1938

U. S. Local Inspector
Philadelphia, Pa.

Gentlemen:

Beg to report that on July 18th, sailing day from Houston, Texas, the following members of our crew have deliberately, while in healthy and sober condition, refused to perform their duties:

Joe Cassavaz	—Bosen
Wm. Reeves	—A. B. Seaman
John Pfuhl	" "
Joseph Warren	" "
Henry Lathan	Ord. "
Wm. Burnes	" "
John Tracey	Oiler
Edw. B. Hughes	"
Alexander Broun	—Fireman
Elmer Feurgeson	— "
Gordon Neeley	—Wiper
Charles Holt	— "
Edward Smith	—Mess Boy

From 8.00 A. M. to 7.00 P. M. each one of these members refused to obey anyone connected with the ship's or Company's officials. At 7.00 P. M. when ordered by Union Delegate they resumed their duties. Upon our arrival at Philadelphia, we did not log any of the men, the reason being leniency. However, we have let out five men:—

Joseph Warren	—A. B. Seaman
John Pfuhl,	" "
John Tracey	Oiler
Elmer Feurgeson	Fireman
Edward Smith	Mess Boy

because of their unsatisfactory behavior. This morning at 8.00 A. M. the other eight men quit the ship and we have proceeded to replace all the thirteen men.

Yours very truly,

A G RUDAN
Master

RESPONDENT'S EXHIBIT NO. 8.

POSTAL TELEGRAPH

Received at
1420 So. Penn Square Philadelphia, Pa.
Bell, Locust 3740 Key., Broad 5221

P 2 49 DL 5 Extra confirmation telegram phoned deliver promptly.

PXX Houston Tex 18 904P

Chas F Sherry—
Marchwood Apt 5515 Wissahickon Ave Phila—

FtWorth Sailed nine PM with original crew stop Rayzors agreement with Mandel stipulates discussion in the next day or so and if this discussion confirms that the appeal from the elections is now properly before the Board the Union will await the Boards decision—

L A SCHREIDER JR.

RESPONDENT'S EXHIBIT NO. 9.

Law Offices
ADAMS, CHILDS, McKAIG AND LUKENS
700 Integrity Building
Sixteenth and Walnut Streets
Philadelphia

December 23rd, 1938.

National Labor Relations Board,
Bankers Securities Building,
Philadelphia, Pa.

Re Southern Steamship Company—N.M.U.

Gentlemen:

Herewith we enclose a copy of a telegram dated July 18th, 1938 signed by L. A. Schreider, Jr. to Charles F. Sherry.

The enclosed copy was taken from the original records of the Postal Telegraph Company, which fact we have confirmed by a personal telephone conversation with Mr. G. R. Rosenfeld, Credit Manager of that Company. We assume that it will not be necessary to have Mr. Rosenfeld testify to the fact that the enclosed telegram is a true copy of the original which is in the possession of Postal Telegraph Company.

Yours very truly,

Adams, Childs, McKaig & Lukens
By Randolph W. Childs

C:R
Enc.

MOTION TO DISMISS THE COMPLAINT.

(Docketed January 25, 1939.)

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD,
FOURTH REGION.

CASE NO. IV-C-541.

In the Matter of

Southern Steamship Company

and

National Maritime Union of America
(Affiliated with the C. I. O.).

Southern Steamship Company, the respondent herein, moves the National Labor Relations Board to dismiss the complaint on all of the grounds set forth in the Answer and on the further grounds that the evidence produced at the hearing is not sufficient to sustain the complaint or to establish any unfair labor practice under the National Labor Relations Act and that it appears from the undisputed evidence that the respondent has sustained the validity of the defences asserted in respondent's answer.

Dated January 16, 1939.

SOUTHERN STEAMSHIP COMPANY,
By ADAMS, CHILDS, MCKAIG & LUKENS,
Its Attorneys.

OBJECTION TO MOTION OF NATIONAL LABOR RELATIONS BOARD THAT THE COMPLAINT BE CONFORMED TO THE PROOF AND EXCEPTION.

(Docketed January 25, 1939.)

The respondent, SOUTHERN STEAMSHIP COMPANY, by its attorneys, Adams, Childs, McKaig & Lukens, objects to the motion that the Complaint be conformed to the proof and excepts to the ruling of the trial examiner thereon; the objection and ruling being as follows:

"MR. CASTIELLO: Mr. Examiner, I have a motion to make. I move that the complaint be conformed to the proof. The purpose of this motion is not to substantially change the nature of the proceedings in any manner. It merely goes to such minor deficiencies in the complaint as disclosed by the evidence, such as dates, names and their spellings and minor defects of that nature.

TRIAL EXAMINER SEAGLE: Do you have any objection to that?

MR. BROWN: I should think that the only objection would come when and if a change is made, and perhaps submitted to us. All I do is to reserve on behalf of the respondent the right to object to any motion when and if made.

TRIAL EXAMINER SEAGLE: I understand that motion is intended to correct any errors which may already exist in the record. The motion does not specify any particular change.

MR. BROWN: Not knowing what changes they have in mind or what effect they might have I will reserve such objections pending an opportunity to see the effect of the change.

TRIAL EXAMINER SEAGLE: The objection is overruled."

(Official Report of Proceedings pages 741 and 742.)
Dated, January 16, 1939.

SOUTHERN STEAMSHIP COMPANY

By ADAMS, CHILDS, MCKAIG & LUKENS,
Its Attorneys.

MOTION TO STRIKE OUT TESTIMONY.

(Docketed January 25, 1939.)

Southern Steamship Company, the respondent herein, moves the National Labor Relations Board to strike out the following evidence to the admission whereof the respondent duly objected at the hearing:

1. The following testimony of the witness Palazzi, appearing at pages 14 and 15 of the Official Report of Proceedings:

> "feeling sure if I told the girl I was a representative of the National Maritime Union that I might not have had the opportunity of speaking to Mr. Sherry."

2. The following testimony of the witness Palazzi, appearing at pages 20 and 21 of the Official Report of Proceedings:

> "A. I told him that I wanted to see Mr. Sherry. He wanted to know who I was. I told him I was the business agent of the Union, that we had won an election aboard the ships of the Southern Steamship Company, and the Board had certified us as the collective bargaining agency, therefore I wanted to see Mr. Sherry to talk over the matter of this agreement, and an agreement with the company; and the watchman told me that he had no permission to allow anybody up to his office. I told him that this was a serious

matter, and that if he did not let me up to his office, there may be consequences, because we were certified by the Board, and I was sure that Mr. Sherry would have to see us at one time or another.

By Mr. Castiello:

Q. Did you get in to see Mr. Sherry?

A. No. He told me 'those are my orders, and my job depends upon my orders.' "

3. The telegram, Board's Exhibit No. 5, referred to at pages 21, 22, 23, 24, 25, 26 and 27 of the Official Report of Proceedings.

4. The following testimony of the witness Palazzi, appearing at pages 27, 28, 29 of the Official Report of Proceedings:

"A. This telephone call was received before the receipt of this telegram here.

Q. Board's Exhibit No. 5?

A. Yes.

Q. And from whom did you receive it?

A. The telephone call was from R. Gurtov, business agent of the Union at the port of Houston, Texas.

Q. Go ahead.

A. And he told us that the understanding was that the company had agreed to release the ship on the basis that we would sit down and draw up an agreement covering the unlicensed personnel of this ship, that passes would be issued, and that the men involved in the strike would not be discharged."

5. All evidence of the witness Palazzi as to the conversations with Mr. Sherry, such evidence appearing at pages 13, 14, 15, 37 and 46 of the Official Report of Proceedings.

6. All testimony as to a certain letter alleged to have been written by the witness Palazzi to the Southern Steam-

ship Company in January 1938, appearing at page 46 of the Official Report of Proceedings.

7. The testimony of the witness Tracey, appearing at pages 79, 80, 81, 82 and 83 of the Official Report of Proceedings including the following testimony at page 78:

> "A. So we all went off, and went down on the dock, and he told us that everything was all right."

and testimony at page 82:

> "By Mr. Castiello:
>
> Q. Can you tell us what Mr. Jarvis had to say?
>
> A. He said everything was all right, he said our lawyer and their lawyer is going to get together, and by the time we get back to Philadelphia, everything will be straightened out, we will have passes for our delegates aboard by the time we reach Philadelphia, and by no means no one would be discharged when they got there."

8. The following testimony of the witness Tracey, appearing at page 87 of the Official Report of Proceedings:

> "The Witness: I told Paul Palazzi how everything was down there, and he said not to worry, he said they can't do that."

9. The testimony of the witness Tracey as to conversations with Mr. Jarvis appearing at pages 109 and 110 of the Official Report of Proceedings.

10. The following testimony of the witness Tracey appearing at page 113 of the Official Report of Proceedings:

> "The Witness: Well, when he called us off the ship, he waved to us and brought us off the ship. We all went out there, the whole thirteen of us, or the whole twelve of us, one was already out there.
>
> He told us that everything was settled, that everything was all right. He said the company's lawyer and our lawyer will get together, and they will nego-

tiate, or whatever they were going to do, and our delegates would have passes to come aboard when we reached Philadelphia, and that there would be absolutely nobody fired when we got there.

By Mr. Castiello:

Q. Are you sure that is what was said?

A. Yes, sir."

11. The following testimony of the witness Ferguson appearing at page 127 of the Official Report of Proceedings:

"A. Mr. Jarvis said, 'Well, boys, go ahead and go back aboard the ship, and take the ship back to Philadelphia, and by the time she gets to Philadelphia, the company lawyer and the union lawyer will get together, within the seven days it will take to get the ship back there, and they will make some arrangement to issue passes for our delegates at both ends', and that there wouldn't be anybody fired or logged, or any discrimination of any kind taken for any action that we took down there in Houston.

Q. Was there anything else said by him?

A. No, not as I recall."

12. The following testimony of the witness Smith appearing at page 115 of the Official Report of Proceedings:

"A. Well, he said that everything was all right, and there would be no discrimination, that is, nobody would be fired when we got to Philadelphia on account of the action we took on that day of the strike and that they would talk over with our union officials the terms of the contract, for the union to be the sole bargaining agent between the members and the company."

13. The testimony of the witness Pfuhl as to his conversation with Mr. Sherry about the Copeland Book appearing at pages 172, and 173 of the Official Report of Proceedings.

14. The following testimony of the witness Pfuhl appearing at page 177 of the Official Report of Proceedings:

"Q. Can you tell me what the shore delegate had to say?

A. He said, 'Well, boys, it is all over; go back to work and everything will be settled by the time you get to Philadelphia, there will be shore delegates on the dock with passes, because they agreed to give them passes, and there will be no one fired for his actions.'

Q. Was there anything further said?

A. Not of importance, that I can recall.

Q. Was there anything said about union recognition?

A. They said there will be further discussion between the officials on that, that they will get together.

Q. They will get together on passes?

A. Yes.

Q. And union recognition?

A. Yes, sir.

Q. But what was the agreement as for no discrimination as to anybody who had gone on strike?

A. It was positively stated that there would be no one discharged in discrimination.

Q. Now, was it because of this agreement that the strike terminated?

A. It is the only reason."

15. All testimony of the witness Burns as to the conversations between the Union delegates and the witness appearing at pages 211 and 212 of the Official Report of Proceedings.

16. The testimony of the witness Helland as to his use of intoxicating liquor, appearing at pages 319 and 320 of the Official Report of Proceedings.

17. The testimony of the witness Kuhtreiber as to his remarks about unions, appearing at pages 420, 421, 422, 423 of the Official Report of Proceedings.

18. The testimony of the witness Cunningham as to conversations between union representatives appearing at pages 643, 644, 645.

19. The following testimony of the witness Cunningham, appearing at pages 647 and 648 of the Official Report of Proceedings:

"Q. Can you tell us, Mr. Cunningham, whether you know of persons, or whether you have seen persons not connected with the N. M. U. as delegates or officials, have free access to the docks?

MR. BROWN: We object to that unless it is shown that he knows who these people are and the purpose they had for going on the docks, and any right they might have for being there.

TRIAL EXAMINER SEAGLE: The objection is overruled.

THE WITNESS: Do you want me to answer that question?

MR. CASTIELLO: Yes.

A. I know of numerous people who have gone on that dock, have free access to it there, some members of our own organization.

Q. Can you give us the names of some people?

A. Well, I would like to be a little more thorough there in that answer there. When a seaman is on the beach, if he is broke he usually contacts those ships to get a meal, and almost everybody on the beach down there has made one of those Southern Steamship Company ships at one time or another to go aboard to get a meal there.

Q. What do you mean 'when they are on the beach'?

A. When they are unemployed. An unemployed seaman is classed as being on the beach. That is what we term it.

Q. Have you ever seen any of these unemployed seamen go on any of the ships of the Southern Steamship Company in the manner that you have just testified to?

A. I have been down on that dock myself and saw them go aboard; yes, sir.

Q. Can you tell me whether or not any of those unemployed seamen to your knowledge were ever stopped by any of these private officers, whom you say were in the employ of the company?

A. Occasionally they would be stopped; yes, sir.

Q. Were they permitted to go on the docks?

A. They were permitted to go on the docks, yes, sir.

Q. Were they stopped when they went on the docks or when they attempted to board the ship?

A. Sometimes stopped on the dock and sometimes when they attempted to go aboard ships. It is according to how long a man has been going down there."

20. The following testimony of the witness Mandell, appearing at page 682 of the Official Report of Proceedings:

"A. Yes, sir. From my experience in the practice of law and labor matters, I never have and never would advise or willingly agree to a disposition of a labor dispute which would result in the discharge or loss of employment to any of the employees by reason of their participating in a labor dispute or strike of any nature."

21. The following testimony of the witness Mandell, appearing at page 683 of the Official Report of Proceedings:

"A. If I would have had any idea that something like that might have been done I would not have attempted to persuade the National Maritime Union to get the ship to sail."

22. The following testimony of the witness Mandell, appearing at page 690 of the Official Report of Proceedings:

> "A. If they had I would have been advised of such action, and I have not been advised of such action. As a matter of fact, recently in New Orleans, last Thursday, the Gulf District Committee told me that they have not as yet been able to get anywhere with the Southern Steamship Company."

Dated, January 16, 1939.

SOUTHERN STEAMSHIP COMPANY,

By ADAMS, CHILDS, MCKAIG & LUKENS,
Its Attorneys.

INTERMEDIATE REPORT.

(Docketed February 27, 1939.)

Upon charges duly made and acting pursuant to proper authority, the National Labor Relations Board, by Bennet F. Schauffler, its Regional Director, issued its complaint against Southern Steamship Company, respondent herein. The complaint and notice of hearing thereon were duly served upon the respondent.

The complaint alleged that the respondent had engaged in unfair labor practices within the meaning of Section 8 (1), (3) and (5), and Section 2 (6) and (7) of the Act. The respondent's answer admitted almost all of the objective facts alleged in the complaint but denied that it had engaged in any unfair labor practices.

The undersigned, as duly designated Trial Examiner of the National Labor Relations Board, conducted a hearing on December 5, 6, 14, 21, 22, and 23, 1938, at Philadelphia, Pennsylvania, and on January 9, 1939, at Houston, Texas, at which place all parties were afforded an opportunity to participate in the hearing, to call, examine and cross-examine witnesses and introduce evidence. At the conclusion of

the hearing the parties were afforded a reasonable opportunity to argue orally before the undersigned, and were advised by him that they would be given an opportunity for oral argument before the Board upon request to the Board made within ten (10) days from the receipt of the Intermediate Report.

At the close of the hearing in Houston, Texas, permission was granted to counsel for the respondent to file in writing within ten (10) days any motions which they might desire to make. Within this 10-day period, counsel for the respondent filed three documents: (1) a motion to dismiss the complaint for failure of proof; (2) a motion to strike out certain testimony taken at the hearing, and (3) an objection and exception to a motion of counsel for the Board, which had been granted at the hearing, to conform the complaint to the proof. Both motions thus filed in writing are herewith denied in all respects, and the objection is overruled.

Upon the record thus made and his observation of the witnesses, the undersigned makes, in addition to the above, the following specific findings of fact:

Findings of Fact.

I. RESPONDENT.

1. The respondent, which had been a corporation organized and existing under the laws of the State of Delaware since January 7, 1903, was authorized on May 7, 1935, to do business in the Commonwealth of Pennsylvania. It now has its principal office and place of business at 1360 Broad Street Station Building, in the city of Philadelphia, in the said Commonwealth. The business of the respondent is the operation of steamships for the carriage of freight in interstate commerce, and more particularly between the ports of Philadelphia, in the Commonwealth of Pennsylvania, and Houston, in the State of Texas.

II. THE ORGANIZATION INVOLVED.

2. The National Maritime Union of America, affiliated with the C. I. O., which will hereinafter be referred to as the N. M. U. or simply as the Union, is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act.

III. THE UNFAIR LABOR PRACTICES.

A. The Refusal to Bargain Collectively.

3. After investigation and hearing and the holding of an election, in accordance with Section 9 (c) of the Act, the National Labor Relations Board certified on January 26, 1938, that the N. M. U. had "been selected by a majority of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by Southern Steamship Company," the respondent in the present proceeding. The respondent's answer admitted the appropriateness of this unit. Prior to the certification, however, the respondent had filed objections to the conduct of the election, and these objections were renewed in its answer. At the hearing, however, it was stipulated by counsel for all parties that for the purposes of the present proceeding the validity of the Board's certification should depend upon the correctness of its ruling that in the absence of consent by the labor organizations participating in the election, representatives of the respondent had no right to be present while the election was being conducted. Thus the respondent waived any other objection to the conduct of the election which might exist. The respondent's answer also admitted that after Paul Palazzi, an agent of the N. M. U., had on August 18, 1938, written to Charles F. Sherry, its marine superintendent (whose name, however, is misspelled in the letter as "T. Cherry"), re-

questing a meeting in order to discuss the possibility of a labor agreement, the latter had sent a letter in reply which refused to entertain the request until the dispute arising from the conduct of the election had been settled. Since, however, the Board had as a matter of fact already settled this question adversely to the respondent, and its ruling still stands, it follows that the respondent had violated the Act by refusing to bargain collectively with the N. M. U. at least since August 23, 1938.

4. The testimony taken at the hearing, however, establishes further that the respondent had violated the Act in this respect at least within a few weeks after the certification of the N. M. U. by the Board. Paul Palazzi telephoned to Sherry, either the latter part of January or the early part of February, to request a collective bargaining conference, only to be told that the whole matter was in the hands of the company's lawyers. About the middle of Febuary he also wrote a letter to Sherry which made a similar request. He could not, however, produce a carbon copy of this letter, which, he explained, he had typewritten himself one Saturday afternoon after the stenographer had left the office. At the time Palazzi gave this testimony, counsel for the respondent declared that Sherry would be called upon to testify that this letter had never been received, and that a member of the law firm representing the respondent would testify that it was not in the firm's files. Neither intention, however, was carried into effect. Although Sherry did testify, counsel refrained from asking him any questions concerning the receipt of the letter or other attempts made by Palazzi to contact him. About the middle of March, Palazzi made another fruitless telephone call to the respondent's marine superintendent, and sometime thereafter was barred by a guard when he made an attempt to see the superintendent at the company's dock in Philadelphia.

5. Moreover, almost immediately after the certification by the Board, E. J. Cunningham, a representative of the

N. M. U. at Houston, Texas, had also made a request for a conference and the issuance of passes, without which the respondent's vessels could not be boarded, to L. A. Schreider, Jr., who was the respondent's agent in this port. Although the latter told Cunningham that he would get in touch with him after he had transmitted his request to the home office at Philadelphia (since he himself had no authority to grant it), he never did so. This testimony, too, is undenied. Indeed, as Sherry himself stated, it had been the position of the respondent from the very beginning that it would not deal with the N. M. U. Moreover, this fact was notorious on the docks in Philadelphia and Houston. Captain Rudan, the master of the S. S. City of Fort Worth, a vessel of the respondent on which a strike finally took place, as a result of its refusal to bargain collectively with the Union, testified that he discussed the matter with many people on the docks in both Philadelphia and Houston, and that the members of his own crew had complained to him that although the Union had won an election, the respondent would not abide by its result.

B. The Discriminatory Discharges.

6. On Sunday, July 17, 1938, the S. S. City of Fort Worth (hereinafter referred to as the Fort Worth), which had arrived from its home port of Philadelphia, Pennsylvania, was moored to its dock in the port of Houston, Texas. On this day 13 unlicensed members of the crew of the Fort Worth who were members of the N. M. U. met at the union hall in Houston with the business agent and shore delegates of the Union, and resolved to strike the next morning at 8 o'clock in order to force the respondent to recognize the Union, and to issue passes to its delegates. The strike was to be carried into effect by shutting off the steam except for the "auxiliaries," i. e., the fire alarms, the ice machine, the sanitary pumps, and the line. The 13 unlicensed members of the crew of the Fort Worth who took

this resolution and carried it into effect the morning of July 18 were as follows:[1]

Name	*Capacity*
Joseph Crassavaz	Boatswain
William Reeves	Able seaman
John Pfuhl, Jr.	Able seaman
Joseph G. Warren	Able seaman
Henry A. Lathan	Ordinary seaman
William Godfrey Burns	Ordinary seaman
John J. Tracey	Oiler
Edward B. Hughes	Oiler
Alexander A. Braun	Fireman
Elmer J. Ferguson	Fireman
Gordon Neeley	Wiper
Charles C. Holt	Wiper
Edward W. Smith	Mess boy

7. The strike began on July 18 when the watch was changed at 8 a. m. The oiler, Tracey, who was on duty at the time, cut the steam down, and when this was discovered by the first assistant engineer, Paul, who was on deck, he came down and asked Tracey what the trouble was. The latter told him the crew was striking for passes for the union delegates and recognition of the Union. Paul then said that he would put steam on deck himself. "Well, if you do," said Tracey, "I will have to take the fireman out of the fireroom." After Paul had put steam on, Tracey called Braun out, who threw his pumps. It was, however, then time for Braun to go off duty, and his place was taken by Ferguson. Since the latter, too, would not fire the steam, the second assistant engineer, Robinson, came down and told him that he would take over. When Tracey saw that Robinson was going to light the fires, he went up to report to the strikers, who were sitting on the poop deck.

[1] The strikers are listed on Resp. Exh. No. 1, but the spelling of the text does not follow that of this exhibit but that of the shipping articles, except in the case of those strikers who testified at the hearing. As to them, the names are spelled as they gave them to the reporter.

A little later, Chief Engineer Norton came down to attempt to persuade Ferguson to perform his duties but was no more successful than Robinson.

8. There were altogether 19 unlicensed men in the crew, and, with the assistance of those who did not join the strikers, the officers were able to keep the vessel in operation, and the loading of the cargo proceeded. The strikers made no effort to interfere with the operation of the vessel or its loading, but during the whole period of the strike merely sat on the poop deck. Captain Anthony G. Rudan, the master of the Fort Worth, had not been on board when the strike started, but when he arrived on the scene at about 10:30 a. m. he went upon the poop deck and ordered the striking members of the crew to resume their stations. When they refused to do so, the captain pointed out to them that they were not living up to their articles, which required them to make a round trip from Philadelphia to Houston and return. Whereupon, Warren, who was acting as spokesman for the strikers, answered that they did not think they were doing wrong by violating the articles, because the company had been unfair to them in refusing to recognize the Union after it had won the election. At about 11:30 a. m., the captain brought aboard a deputy United States Shipping Commissioner by the name of Glenn, who read an extract from the shipping laws to the strikers, but Warren made the same reply to him as to the captain. At various times during the day, L. A. Schreider, Jr., the respondent's local agent, also attempted, unsuccessfully, to get the strikers to resume their duties. The strike ended at about 7 p. m., however, when the Union's shore delegates came to the dock and told Warren, first, and then the strikers, who left the ship to talk to them, that they could go back to work since the strike had been settled. The strikers were given to understand that there would be passes issued by the time the ship reached Philadelphia, and that there would be no discrimination against them because of their participation in the strike.

The Fort Worth finished loading at about 8:40 p. m. and sailed at about 9 p. m., the time it would have sailed even if the strike had not occurred. Captain Rudan himself testified to this effect.

9. Those of the strikers who testified spoke of the events of July 18 as a "sit-down" strike, and it was so referred to by a shore delegate of the Union, as well as by counsel in the case. Although there are some indications in the record that a real sit-down strike might have been originally contemplated, it is clear that what actually occurred was not a sit-down strike in any sense of the term that can have legal significance. Not only were the strikers orderly throughout the whole period of the strike, but at no time did they interfere with the officers' control and operation of the ship; nor did they seize or retain possession thereof. At no time during the strike did any officer order the strikers to get off the ship. Schreider, the local agent, did at frequent intervals warn the strikers that they would be replaced by another crew and would have to get off the ship, but he never put this threat into execution. It is true that in the literal sense of the term the strikers did "sit down" on the poop deck, but this was the usual place of meeting and recreation where members of the crew would gather when they were not at work. It must not be forgotten that, unlike a factory, a ship is not only the place of employment but also the living quarters of the crew. Consequently, their mere presence on the ship, in the absence of interference with its control by its officers, could not constitute trespass. That the strikers were not regarded as trespassers appears from the fact that with the consent of the captain they were served their mid-day meal on board the ship during the strike by one of their own number, the mess boy, Smith. Nothing could better indicate the nature of the atmosphere in which the strike was conducted.

10. On the return trip from Houston to Philadelphia, which took from July 18 to 25, the conduct of the members

of the Fort Worth's crew who had been on strike was, moreover, exemplary. There were no recriminations and no breaches of discipline. Captain Rudan admitted that on the return trip the strikers conducted themselves "in a competent manner," and that he had no complaints. First Mate Helland testified that he felt that he had a safe crew when he sailed from Houston on July 18. Second Assistant Engineer Robinson testified that the strikers "were a good crew on the return voyage, just as they always were a good crew." Indeed, he explained that he spoke to the three strikers who were on his watch throughout the voyage, i. e., Ferguson, Braun and Hughes, and said to them: "Well, boys, let's forget all about what happened . . . Let's string along just as though nothing had happened," and he concluded, "they went home just as though nothing had happened." The only complaint made by any of the officers as to the conduct of the strikers on the return voyage was that of First Mate Helland, who testified that the mess boy, Smith, would say Good Morning "kind of half-hearted like."

11. Nevertheless, despite all this, during the return voyage, various officers of the ship spoke to the captain and recommended to him that certain of the strikers who were in their respective departments should be discharged upon the termination of the voyage. Consequently, after the ship docked in Philadelphia on July 25, 5 of the 13 members of the crew who had gone on strike on July 18 were discharged by various officers of the Fort Worth. The five to be discharged were the two able seamen, Warren and Pfuhl, the two oilers, Tracey and Ferguson, and the mess boy, Smith. The Fort Worth had docked at about noon but the crew was not signed off until about 3 or 3:30 p. m. It was the custom of the respondent to sign the crew on again immediately after it was signed off, but in this instance it was not done and the five members of the crew were told of their discharges shortly after they signed off. It is necessary to emphasize that they were discharged upon

the order of the captain as a result of a decision which he had definitely made after the conversations with his officers while the ship was still at sea. Chief Engineer Norton testified he discharged Tracey and Ferguson before he even talked to Sherry, the marine superintendent of the respondent. First Mate Helland, who discharged Warren and Pfuhl, and Steward Kuhtreiber, who discharged Smith at about 5 p. m., which was about an hour later than the others had been discharged, did speak to Sherry before taking this action. But this was not to seek his authority but merely by way of giving him information. The captain admittedly had full authority to discharge any of the unlicensed members of the crew. Sherry, in any event, never interfered when he learned what was about to be done.

12. The striking members of the crew of the Fort Worth had apparently contemplated the possibility that they might be discharged after the ship reached its home port. On July 24, while they were still at sea, they had had a meeting in the forecastle, at which they decided that they would go on strike if anyone of their number was discharged. When Warren, Pfuhl, Tracey, Ferguson, and Smith were dismissed after the ship docked on July 25, the resolution that had been taken was put into execution. All the N. M. U. members of the crew who had not been discharged, with one exception, went on strike in protest against the action which had been taken by the respondent. The exception was Alexander A. Braun, who remained at work. Again the record indicates that a sit-down strike was intended but never put into execution. The striking members of the crew merely left the ship together with those who had been discharged.

13. The Union contended that the respondent's officers and others who acted on its behalf were guilty of extreme bad faith in discharging five of the strikers, in view of the fact that there had been a definite agreement that there was to be no discrimination by reason of participation in

the strike. While the shore delegates of the Union justifiably had the impression that such an agreement had been explicitly made, and undoubtedly so informed the striking seamen, the evidence does not support the conclusion that it was made in fact.

14. When about 5 p. m. of the day of the strike the captain and Schreider had seen that they could not induce the strikers to go back to work, they had sought the assistance of J. Newton Rayzor, a member of the law firm of Royston & Rayzor, which represented the respondent in maritime matters at Houston, and Rayzor had gotten in touch by telephone with Arthur J. Mandel, who represented the N. M. U. at Houston. It appears that both attorneys were at the time under the misapprehension that the Board still had under consideration the objections of the respondent to the manner in which the election on its ships had been conducted, and Rayzor induced Mandel to secure the release of the Fort Worth by persuading him that it would be best to let the crew return to work pending the determination of this question. The *quid pro quo* of this arrangement was a promise on the part of Rayzor that he would meet with Mandel the next day to discuss the question of issuing passes to the Union's delegates, and that he personally would recommend to the respondent that such passes should be issued even though the validity of the election was not yet decided. Now, although nothing was said in so many words about not discharging any of the strikers, such a condition was implicit in the very nature of the arrangement, which obviously contemplated the maintenance of the *status quo*. Moreover, two facts stand out from the course of the negotiations which do reflect upon the conduct of some of those who represented the respondent.

15. It appears that before calling Mandel, Rayzor made a long-distance telephone call to Sherry, in which he told him that he was going to discuss the question of issuing

passes with Mandel, whereupon Sherry authorized him to do so, although he told him at the same time that he would under no circumstances ever permit passes to be issued. The only excuse which Rayzor could give for not enlightening Mandel as to the attitude of Sherry, who was in active charge of the respondent's affairs, was the very inadequate one that he intended to go over his head to the president of the respondent. It is equally difficult to understand the conduct of Captain Rudan. He (as well as the other officers of the ship who testified) insisted that he never learned exactly on what terms the strike had been settled, despite the fact that he was present during at least part of the conversations. Yet he made his decision to discharge some of the strikers while his ship was still at sea. For all that appeared, he might be wrecking the negotiations which he knew were proceeding, and one of the terms of the settlement might have been that none of the strikers was to be discharged. It is highly significant that even after the Fort Worth docked, none of the officers of the vessel who talked to Sherry, from the captain to the steward, asked him about how the strike had been settled.

16. The defense interposed by the respondent in its answer to justify the discharges of the five members of the crew of the Fort Worth is that since they had signed shipping articles at the port of Philadelphia for a trip from this port to Houston and return, they had no right to go on strike and disobey the lawful commands of their officers, and that, moreover, in execution of the strike they had taken unlawful possession of the ship. It has already been pointed out that the striking members of the Fort Worth's crew did not take possession of the vessel or interfere with its operation. They merely refused to work, and if they did anything with the vessel it was in the interest of assuring its safety. The position of the respondent that the N. M. U. members of the crew had no right to strike finds no support in the Act, which does not except maritime

employment. The shipping laws must be read together with the provisions of the Act, which preserves the right to strike. This must be especially so when, as in this case, the strikes had been indubitably precipitated by unfair labor practices. The strike of July 18 was the outcome of the respondent's refusal to engage in collective bargaining with the N. M. U., and the strike of July 25 was preceded not only by this unfair labor practice but by the discriminatory discharges of the same day. It is necessary to point out also that while the crew of the Fort Worth had signed shipping articles, these were not compulsory under the shipping laws, since the respondent was engaged exclusively in coastwise trade, and hence that penalties otherwise applicable under the shipping laws would not apply. The respondent might have secured the discharge of the strikers in Houston, and there they themselves might have quit without incurring more than their loss of pay. But the respondent took no action in Houston; indeed, the strikers were not even logged. Moreover, by shipping them after the strike terminated, the officers necessarily forgave them for any dereliction of which they may have been guilty, and this quite in the absence of any express agreement against discrimination.

17. As a matter of fact, however, the testimony of the respondent's own witnesses demonstrates conclusively that the discharges of the five members of the Fort Worth's crew on July 25 could not have been due to the fact that they had gone on strike and refused to obey the orders of their superiors in violation of their articles. If that had been the reason, the respondent would have discharged all 13 members of the crew who went on strike. Captain Rudan himself explained the logic of this position when he was asked whether the five men were not fired because they went on strike. "It wasn't the sole reason," he explained, "because if that was the reason, there is no reason why they wouldn't have fired the whole thirteen men, so we had to consider other items with that." The "other items" in the case of

three of the discharged strikers consisted of past derelictions or misdemeanors which the officers of the Fort Worth came to remember on the voyage back from Houston to Philadelphia and which they imparted to the captain in the conversations which they had with him on the return voyage when they recommended to him that certain men in their respective departments should be discharged.

18. The "other items" which were taken into consideration consisted of acts and omissions which the officers themselves admitted were not uncommon among sailors. It seems that Warren was guilty of drinking and profanity; that Pfuhl spilled paint in the course of his work; that Smith did not sweep and clean dishes as well as the steward, Kuhtreiber, desired, and sometimes would not talk to the cook, and yet, despite everything, was admittedly popular with the crew. It was, however, also disclosed that Pfuhl had been sought on a charge of stealing an automobile, but he was later cleared of this charge, and Sherry reshipped him although he knew that the charge was pending. It was shown also that Pfuhl had been convicted of petty larceny of some scrap iron in New Jersey in September 1937, and put on probation for 2 years, but this was apparently not known to Sherry or the officers when they discharged him. A similar lack of knowledge prevailed at the time with respect to some of the other derelictions. In view of the fact that Warren and Smith and even Pfuhl had been reshipped despite knowledge of their derelictions, and that the officers of the Fort Worth admitted that they had a good crew when they made the voyage after the strike, the reasons given for their discharges can hardly be accepted. Indeed, the officers of the Fort Worth admitted that they would not have been discharged if they had not participated in the strike.

19. As far as Tracey and Ferguson are concerned, the officers of the Fort Worth had to admit that they were selected for discharge solely because of their acts during

the strike. The second assistant engineer, Robinson, accused Tracey of "threatening" him when he told the oiler that he was going to put the steam on deck himself. All Tracey did, however, was to ask him whether he intended to do so. Even Robinson's recollection of Tracey's statement is hardly that of a threat, for he testified that the latter said merely: "You had better not. You will be sorry." This charge of a threat is, moreover, entirely inconsistent with the orderliness of the strike, and on cross-examination Robinson made it clear that what really irked him was not Tracey's threatening language but his "back talk." He was asked this question: "And did you recommend that Tracey be fired because he gave you back talk?" and he answered, "Absolutely." In the case of Ferguson, Robinson could think of no reason why he should have been discharged. As a matter of fact, he did not recommend to Chief Engineer Norton that Ferguson should be discharged, and when he learned of his discharge in Philadelphia he expressed surprise to his chief. Ferguson was discharged as the result of a direct recommendation made by Norton to the captain.

20. On cross-examination, the Fort Worth's officers finally admitted their reasons for the five discharges. The reason in the case of Warren was the obvious fact that he had been the spokesman and apparent leader of the strikers. It was the fact that Pfuhl had had the temerity to join the strikers despite his personal record that made the respondent's officers decide to discharge him. "After being lenient with him," explained Captain Rudan, "he had indulged in this disobedience down there." The steward, Kuhtreiber, was especially annoyed with Smith and recommended his discharge because he had, so to speak, gone on strike behind his back, for, like Captain Rudan, Kuhtreiber was not on board when the strike started. Moreover, the steward also explicitly admitted that he recommended Smith for discharge only in order to teach him a lesson, and that as a matter of fact he intended to rehire him after he had been kept out for a

few trips. The chief engineer, Norton, testified that he recommended to the captain that Ferguson be discharged, but not merely because he had disobeyed his orders. "I would have overlooked that," he explained, "had he taken the fires until we got straightened out." According to Captain Rudan, the reason for the discharge not only of Ferguson but also of Tracey was that Norton had told him that "they had been on watch at the time of the commencement of this what I consider disobedience, and if they had gone on watch at the time, that the rest of the men probably would have followed . . ."

21. Although the respondent's officers admitted that there had been special reasons for selecting five of the strikers for discharge, they were more reticent when pressed as to whether they had not discussed the question of the relative responsibility of the strikers. But that they in fact did so is clear from the action they took. It is apparent that no one was discharged merely for striking. Yet the motives of the respondent's officers are not adequately described by saying even that they selected five of the strikers because of their conduct in connection with the strike. These were chosen, first, as a warning and an example to the other members of the crew, and second, because the strike evidenced that all five were the most determined and dangerous members of the N. M. U. Among the five who were selected are to be found all three of the Union's delegates on the Fort Worth: Warren, Tracey, and Smith were, respectively, deck, engine and steward department delegates on the Fort Worth. Only in the case of Pfuhl is there no indication in the record that his activity in connection with the strike was exceptional. But, as indicated, he had shown himself especially determined because he had joined the strikers despite the fact that his personal record should have made him careful.

22. The record shows, moreover, that the officers of the Fort Worth had a channel of information with respect to

the union activities of the crew. Joseph Crassavaz, the boatswain, although he had apparently joined the strikers, came to Heiland and reported to the first mate that the men would not go to work. During the strike, Crassavaz also imparted to Helland, obviously by way of extenuation, the fact that he had joined the Union only the night before. And during the return voyage he acquainted his superior with the news that he had found out that it was Pfuhl who had spilled paint on the deck. Crassavaz also went on strike July 25 when five of the members of the crew were discharged. But he was rehired after missing only one trip, and he missed this trip, explained Sherry, only because his reshipment could not in the confusion be conveniently arranged. Finally, it is necessary to stress the fact that the record contains undenied and unrebutted testimony that Sherry on occasion questioned applicants for employment concerning their union affiliation as well as other indications of anti-union hostility. The discriminatory discharges of the five members of the Fort Worth's crew were only a further indication of this hostility.

23. Thus, Joseph G. Warren, John Pfuhl, Jr., John Joseph Tracey, Elmer Joseph Ferguson, and Edward W. Smith, all employees of the respondent, were discharged by agents of the respondent on July 25, 1938, and have since been refused employment by the respondent for the reason that they had joined the National Maritime Union of America, affiliated with the C. I. O., and engaged in concerted activities for the purpose of collective bargaining and other mutual aid or protection, and more particularly for the reason that in protest against the unfair labor practices of the respondent they had gone on strike on July 18, 1938, with other employees of the respondent, who, however, were not discharged for their participation in the same strike. By the said discharges and refusals to reemploy the said employees, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

24. It was stipulated by counsel for all parties that the value of maintenance of a seaman on shipboard on the respondent's vessels was $2.35 per day. The record shows that at the time of the hearing, Joseph G. Warren, the only one of the five strikers to be discharged who did not appear to testify, had employment at the time of the hearing as third mate on a vessel of the Gulf Refining Company, but that he left the ship at Port Arthur, Texas. But neither the terms of his employment nor the reason for his leaving appear, and it is possible that he may have been on a relief voyage. John Pfuhl, Jr., has had since his discharge two temporary jobs, which have netted him $182.50, plus the value of his maintenance on shipboard in one of the jobs which consisted of a relief trip on a vessel of the Atlantic Refining Company. Edward W. Smith has earned $36 on a temporary job arising from a trial run of a United States cruiser. John Joseph Tracey and Elmer Joseph Ferguson have had no employment since their discharge by the respondent. Moreover, Ferguson was deprived by the respondent of a $25 bonus which was due him because he had worked for the respondent continuously for over a year, for the reason that he had participated in the strike of July 18, 1938. Thus the record does not show that any of the five discharged employees has secured substantially equivalent employment. The reinstatement of John Pfuhl, Jr. will, however, not be recommended because of his personal record.

IV. INTERSTATE COMMERCE.

25. In the course and conduct of its business the respondent owns and operates seven vessels, with gross tonnage as follows:

Name of Vessel	*Gross Tonnage*
City of Dallas	2,559
City of Fort Worth	2,606
City of Houston	2,609

Name of Vessel	*Gross Tonnage*
City of Philadelphia	2,674
San Antonio	2,689
West Texas	2,686
Wichita Falls	2,559

26. The respondent does not own any piers. It operates from the Pennsylvania Railroad Pier at 46 South Wharves, in the city of Philadelphia, Pennsylvania, and from Municipal Dock No. 4 in the city of Houston, Texas. The vessels operated by the respondent sail according to fixed schedules: Southbound from Philadelphia, Pennsylvania, to Houston, Texas, on Wednesday and Saturday of each week and northbound from Houston, Texas, to Philadelphia, Pennsylvania, on Monday and Thursday of each week. The freight cargoes carried by the vessels are conveyed to the piers by truck, lighter and railroad. The loading and unloading of the vessels are accomplished by stevedores in the employ of the respondent. The outgoing or southbound cargoes are obtained from all of the States on the Eastern Seaboard and from the State of Ohio, while the incoming or northbound cargo is obtained in Arizona, Colorado, Louisiana, New Mexico, Oklahoma, and Texas. The gross revenue of the respondent in 1937 was $1,991,351.81, and the gross average tonnage of the freight carried by its vessels in the same year was 341,581 tons. Approximately 843 persons are in the employ of the respondent.

27. The activities of the respondent, set forth in Section III above, occurring in connection with the operations of the respondent described in Section IV herein, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions and Recommendations.

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes that:

1. Respondent, by refusing at all times since at least the middle of February 1938 to bargain collectively with respect to rates of pay, wages, hours of employment, and other conditions of employment, with National Maritime Union of America, affiliated with the C. I. O., a labor organization within the meaning of the National Labor Relations Act, as the exclusive representative of the unlicensed personnel employed in its deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated by the respondent out of Atlantic and Gulf ports, has engaged in an unfair labor practice affecting commerce within the meaning of Section 8 (5) and Section 2 (6) and (7) of the National Labor Relations Act.

2. Respondent, by discharging on July 25, 1938, Joseph G. Warren, John Pfuhl, Jr., John Joseph Tracey, Elmer Joseph Ferguson, and Edward W. Smith, all employees of the respondent, and by refusing to re-employ them at all times since then, for the reason that they had joined the National Maritime Union of America, affiliated with the C. I. O., and engaged in concerted activities for the purpose of collective bargaining and other mutual aid or protection, and more particularly for the reason that in protest against the unfair labor practices by the respondent they had gone on strike on July 18, 1938, with other employees of the respondent, who, however, were not discharged because of their participation in the same strike, has discriminated with respect to the hire and tenure of employment of the said five employees, and has discouraged membership in the labor organization known as National Maritime Union of America, affiliated with the C. I. O., and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8 (3) and Section 2 (6) and (7) of the National Labor Relations Act.

3. Respondent, by seeking information as to the union affiliation or activities of employees or applicants for em-

ployment, and by reason of the omissions and affirmative acts described in paragraphs 1 and 2 of these conclusions, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has thereby committed unfair labor practices affecting commerce within the meaning of Section 8 (1) of the National Labor Relations Act.

WHEREFORE, the undersigned recommends that the respondent:

1. Cease and desist from:

(a) Refusing to bargain collectively with respect to rates of pay, wages, hours of employment, or other conditions of employment with National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated by the respondent out of Atlantic and Gulf ports;

(b) Discouraging membership in National Maritime Union of America, affiliated with the C. I. O., or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment because of membership or activity in connection with any such labor organization;

(c) Interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action in order to effectuate the policies of the Act:

(a) Upon request, bargain collectively with respect to rates of pay, wages, hours of employment, or other conditions of employment, with National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in its deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated by the respondent out of Atlantic and Gulf ports;

(b) Offer upon the first available sailing date to Joseph G. Warren, John Joseph Tracey, Elmer Joseph Ferguson, and Edward W. Smith, four of the members of the crew of the S. S. City of Fort Worth who were discharged by the respondent on July 25, 1938, immediate and full reinstatement to their former positions without prejudice to their seniority or other rights and privileges, discharging, if necessary, those who have been hired to replace them;

(c) Make whole Joseph G. Warren, John Pfuhl, Jr., John Joseph Tracey, Elmer Joseph Ferguson, and Edward W. Smith, the members of the crew of the S. S. City of Fort Worth who were discharged by the respondent on July 25, 1938, for any losses of pay they may have suffered by reason of their discharge, by payment to each of them except John Pfuhl, Jr. of a sum of money equal to that which each would normally have earned from the date of his discharge to the date of the respondent's offer of reinstatement—including therein the value of his maintenance on shipboard calculated at the rate of $2.35 per day, and adding thereto in the case of Elmer Joseph Ferguson the bonus of $25 due him on the date of his discharge—less any amount which represents the real value of his earnings during such period;

(d) Make whole John Pfuhl, Jr. by payment to him of a sum of money equal to that which he would normally have earned from the date of his discharge to the date reinstatement is offered by the respondent to the other

members of the crew of the S. S. City of Fort Worth who were discharged by the respondent on July 25, 1938—including therein the value of his maintenance on shipboard caclulated at the rate of $2.35 per day—less any amount which represents the real value of his earnings during such period;

(e) Upon application, and upon the first available sailing date after such application, offer to William Reeves, Henry A. Latham, William Godfrey Burns, Edward B. Hughes, Gordon Neeley, and Charles C. Holt, members of the crew of the S. S. City of Fort Worth, who went on strike on July 25, 1938, in protest against the unfair labor practices of the respondent, immediate and full reinstatement to their former positions without prejudice to their seniority or other rights and privileges, dismissing, if necessary, those who have been hired to replace them;

(f) Make whole the said William Reeves, Henry A. Latham, William Godfrey Burns, Edward B. Hughes, Gordon Neeley, and Charles C. Holt, members of the crew of the S. S. City of Fort Worth who went on strike on July 25, 1938, in protest against the unfair labor practices of the respondent, for any loss of pay they may suffer by reason of any refusal of their applications for reinstatement, in accordance with paragraph (c) herein, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned during the period from the date of any such refusal of their application to the date of reinstatement—including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day—less any amount which represents the real value of his earnings during such period;

(g) Post immediately notices to its employees in conspicuous places on its docks and vessels, stating that the respondent will cease and desist in the manner aforesaid, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting;

(h) Notify the Regional Director for the Fourth Region in writing within ten (10) days from the date of the service of this report what steps the respondent has taken to comply with its recommendations.

It is finally recommended that unless the respondent notifies the said Regional Director in writing within ten (10) days of the service of this report that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board, and that said Board issue an order requiring the respondent to take the action aforesaid.

Request for the privilege of filing briefs with or presenting oral argument before the National Labor Relations Board upon issues raised by any exceptions to this report or other issues upon which it is desired to file a brief or present oral argument must be made to the Board, Shoreham Building, Washington, D. C., within ten (10) days from the receipt of this Intermediate Report.

WILLIAM SEAGLE,
Trial Examiner.

Dated: February 24, 1939.

RESPONDENT'S EXCEPTIONS TO INTERMEDIATE REPORT.

(Docketed March 8, 1939.)

Respondent, Southern Steamship Company, believing itself aggrieved by said Intermediate Report of the Trial Examiner, dated February 24th, 1939 and received February 27th, 1939, and considering the same unlawfully prejudicial to it, hereby excepts to said Intermediate Report as follows:

1. Respondent excepts to the statement in the second paragraph of the Intermediate Report that "the respondent's answer admitted almost all of the objective facts alleged in the complaint."

2. Respondent excepts to the Intermediate Report as a whole and as to each and every part therein on the ground that said report and each and every part thereof is contrary to law and not supported by the evidence. The Findings of Fact and Conclusions contained in said Intermediate Report of the Trial Examiner are contrary to the law and not supported by the evidence. That portion of the Trial Examiner's report containing recommendations is in all respects contrary to law, not supported by the evidence, not within the issues of this proceeding and not within the jurisdiction or authority of the National Labor Relations Board.

3. The respondent excepts to Finding of Fact number 3, except the finding that

> ". . . the National Labor Relations Board certified on January 26, 1938, that the N. M. U. had 'been selected by a majority of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by Southern Steamship Company,' the respondent in the present proceeding. The respondent's an-

swer admitted the appropriateness of this unit. Prior to the certification, however, the respondent had filed objections to the conduct of the election, and these objections were renewed in its answer. At the hearing, however, it was stipulated by counsel for all parties that for the purposes of the present proceeding the validity of the Board's certification should depend upon the correctness of its ruling that in the absence of consent by the labor organizations participating in the election, representatives of the respondent had no right to be present while the election was being conducted. Thus the respondent waived any other objection to the conduct of the election which might exist."

So much of Finding of Fact number 3 as is excepted to, is as follows:

"After investigation and hearing and the holding of an election, in accordance with Section 9 (c) of the Act, . . . The respondent's answer also admitted that after Paul Palazzi, an agent of the N. M. U., had on August 18, 1938, written to Charles F. Sherry, its marine superintendent (whose name, however, is misspelled in the letter as 'T. Cherry'), requesting a meeting in order to discuss the possibility of a labor agreement, the latter had sent a letter in reply which refused to entertain the request until the dispute arising from the conduct of the election had been settled. Since, however, the Board had as a matter of fact already settled this question adversely to the respondent, and its ruling still stands, it follows that the respondent had violated the Act by refusing to bargain collectively with the N. M. U. at least since August 23, 1938."

on the ground that so much of said Finding of Fact as is excepted to is not supported by the evidence and is contrary to the evidence in that the respondent's letter in reply to Paul Palazzi's letter in fact stated that until the existing dispute arising out of the election on respondent's

ships is settled by the National Labor Relations Board and the Courts, the question of an agreement with his labor organization was premature, and on the ground that the certification by the National Labor Relations Board on January 26th, 1938 of said labor organization was invalid, erroneous, contrary to law and unenforceable, and on the ground that the ruling by the National Labor Relations Board that in the absence of consent by the labor organizations participating in the elections, representatives of the respondent had no right to be present while the elections were being conducted was invalid, erroneous, contrary to law and unenforceable and on the further ground that the respondent was not guilty of a violation of the Act by refusing to bargain collectively with the N. M. U. because of the invalidity of said certification and Ruling.

4. Respondent excepts to Finding of Fact number 4 which is as follows:

"4. The testimony taken at the hearing, however establishes further that the respondent had violated the Act in this respect at least within a few weeks after the certification of the N. M. U. by the Board. Paul Palazzi telephoned to Sherry, either the latter part of January or the early part of February, to request a collective bargaining conference, only to be told that the whole matter was in the hands of the company's lawyers. About the middle of February he also wrote a letter to Sherry, which made a similar request. He could not, however, produce a carbon copy of this letter, which, he explained, he had typewritten himself one Saturday afternoon after the stenographer had left the office. At the time Palazzi gave this testimony, counsel for the respondent declared that Sherry would be called upon to testify that this letter had never been received, and that a member of the law firm representing the respondent would testify that it was not in the firm's files. Neither

intention, however, was carried into effect. Although Sherry did testify, counsel refrained from asking him any questions concerning the receipt of the letter or other attempts made by Palazzi to contact him. About the middle of March, Palazzi made another fruitless telephone call to the respondent's marine superintendent, and sometime thereafter was barred by a guard when he made an attempt to see the superintendent at the company's dock in Philadelphia."

on the ground, among other things, that the said Finding of Fact is not supported by the evidence, that there was no competent testimony, is irrelevant, and on the further ground that the certification of the N. M. U. by the National Labor Relations Board was invalid, erroneous, contrary to law and unenforceable.

5. Respondent excepts to Finding of Fact number 5 which is as follows:

"5. Moreover, almost immediately after the certification by the Board, E. J. Cunningham, a representative of the N. M. U. at Houston, Texas, had also made a request for a conference and the issuance of passes, without which the respondent's vessels could not be boarded, to L. A. Schreider, Jr., who was the respondent's agent in this port. Although the latter told Cunningham that he would get in touch with him after he had transmitted his request to the home office at Philadelphia (since he himself had no authority to grant it), he never did so. This testimony, too, is undenied. Indeed, as Sherry himself stated, it had been the position of the respondent from the very beginning that it would not deal with the N. M. U. Moreover, this fact was notorious on the docks in Philadelphia and Houston. Captain Rudan, the Master of the S. S. City of Fort Worth, a vessel of the respondent on which a strike finally took place, as a result of its refusal to bargain collectively with the Union, testified

that he discussed the matter with many people on the docks both in Philadelphia and Houston, and that the members of his own crew had complained to him that although the Union had won an election, the respondent would not abide by its result."

on the ground, among other things that the said Finding of Fact is not supported by the evidence, is not relevant, is based upon hearsay testimony and other incompetent evidence.

6. The respondent excepts to Finding of Fact number 6 on the ground, among other things, that said finding of fact is not supported by the evidence, is not relevant, is contrary to the evidence and is incomplete in that it fails to find that the thirteen unlicensed members of the crew therein named, although they had signed shipping articles at the Port of Philadelphia, Pennsylvania, under the shipping laws of the United States for a complete voyage on the steamship City of Fort Worth from the Port of Philadelphia and return to that port wilfully disobeyed the lawful commands of the master and other officers on said steamship, agreed to engage in a sitdown strike on the steamship City of Fort Worth and did in fact conduct a sitdown strike; and that upon demand from the master and other officers that they perform their duties which they had agreed to do under their said shipping articles, they then and there refused, which said refusal had among other elements that of mutiny, and said refusal and the circumstances surrounding it were grounds for discharge; and whether the master saw fit to discharge all of the said men or any of them then or later was his and the respondent's lawful right, so that the said complainants when so discharged were not employees under the said National Labor Relations Act.

7. The respondent except.. to Finding of Fact number 7 which is as follows:

"7. The strike began on July 18th when the watch was changed at 8 a. m. The oiler, Tracey, who was on duty at the time, cut the steam down, and when this was discovered by the first assistant engineer, Paul, who was on deck, he came down and asked Tracey what the trouble was. The latter told him the crew was striking for passes for the union delegates and recognition of the Union. Paul then said that he would put steam on deck himself. 'Well, if you do', said Tracey, 'I will have to take the fireman out of the fireroom.' After Paul had put steam on, Tracey called Braun out, who threw his pumps. It was however, then time for Braun to go off duty, and his place was taken by Ferguson. Since the latter, too, would not fire the steam, the second assistant engineer, Robinson, came down and told him that he would take over. When Tracey saw that Robinson was going to light the fires, he went up to report to the strikers, who were sitting on the poop deck. A little later, Chief Engineer Norton came down to attempt to persuade Ferguson to perform his duties but was no more successful than Robinson."

on the ground, among other things, that said finding of fact is not supported by the evidence, and is contrary to the evidence and on the further ground that the finding is that there was a strike whereas in fact there was a sit-down strike which was intended to paralyze the ship's operations and whereas in fact Tracey, Braun and Ferguson wilfully disobeyed the lawful commands of the master and other officers on said steamship and continued such wilful disobedience and unlawfully took possession of the steamship City of Fort Worth or portions thereof and solicited, incited and stirred up other members of the crew of said steamship to disobey and resist the lawful orders of the master and other officers on said steamship and to refuse to perform their proper duties on board the said

steamship, all of which was contrary to and in violation of the said signed shipping articles.

8. Respondent excepts to Finding of Fact number 8 which is as follows:

> "8. There were altogether 19 unlicensed men in the crew, and, with the assistance of those who did not join the strikers, the officers were able to keep the vessel in operation, and the loading of the cargo proceeded. The strikers made no effort to interfere with the operation of the vessel or its loading, but during the whole period of the strike merely sat on the poop deck. Captain Anthony G. Rudan, the master of the Fort Worth, had not been on board when the strike started, but when he arrived on the scene at about 10:30 a. m. he went up on the poop deck and ordered the striking members of the crew to resume their stations. When they refused to do so, the captain pointed out to them that they were not living up to their articles, which required them to make a round trip from Philadelphia to Houston and return. Whereupon, Warren, who was acting as spokesman for the strikers, answered that they did not think they were doing wrong by violating the articles, because the company had been unfair to them in refusing to recognize the Union after it had won the election. At about 11:30 a. m., the captain brought aboard a deputy United States Shipping Commissioner by the name of Glenn, who read an extract from the shipping laws to the strikers, but Warren made the same reply to him as to the captain. At various times during the day, L. A. Schreider, Jr., the respondent's local agent, also attempted, unsuccessfully, to get the strikers to resume their duties. The strike ended at about 7 p. m., however, when the Union's shore delegates came to the dock and told Warren, first, and then the strikers, who left the ship to talk to them, that they could go back to work since the strike had been settled. The strik-

ers were given to understand that there would be passes issued by the time the ship reached Philadelphia, and that there would be no discrimination against them because of their participation in the strike. The Fort Worth finished loading at about 8:40 p. m. and sailed at about 9 p. m., the time it would have sailed even if the strike had not occurred. Captain Rudan himself testified to this effect."

on the ground among other things, that said Finding of Fact is not supported by the evidence, is contrary to the evidence, is irrelevant; that there was no competent evidence to support the finding that the strikers were given to understand that there would be passes issued by the time the ship reached Philadelphia and that there would be no discrimination against them because of their participation in the strike.

9. Respondent excepts to Finding of Fact number 9 which is as follows:

"9. Those of the strikers who testified spoke of the events of July 18 as a 'sit-down' strike, and it was so referred to by a shore delegate of the Union, as well as by counsel in the case. Although there are some indications in the record that a real sit-down strike might have been originally contemplated, it is clear that what actually occurred was not a sit-down strike in any sense of the term that can have legal significance. Not only were the strikers orderly throughout the whole period of the strike, but at no time did they interfere with the officers' control and operation of the ship; nor did they seize or retain possession thereof. At no time during the strike did any officer order the strikers to get off the ship. Schreider, the local agent, did at frequent intervals warn the strikers that they would be replaced by another crew and would have to get off the ship, but he never put this threat into execution. It is true that in the literal

sense of the term the strikers did 'sit down' on the poop deck, but this was the usual place of meeting and recreation where members of the crew could gather when they were not at work. It must not be forgotten that, unlike a factory, a ship is not only the place of employment but also the living quarters of the crew. Consequently, their mere presence on the ship, in the absence of interference with its control by its officer, could not constitute trespass. That the strikers were not regarded as trespassers appears from the fact that with the consent of the captain they were served their mid-day meal on board the ship during the strike by one of their own number, the mess boy, Smith. Nothing could better indicate the nature of the atmosphere in which the strike was conducted."

on the ground, among other things, that said finding is not supported by the evidence, is contrary to the evidence, and that in fact the employees referred to in Finding of Fact number 9 and named in Finding of Fact number 6 wilfully disobeyed the lawful commands of the master and other officers on said steamship and from about 8 o'clock a. m. to 7 o'clock p. m. on July 18th, 1938, continued such wilful disobedience and unlawfully took possession of said steamship or portions thereof and explicitly engaged in a sit-down strike and were guilty of unlawful acts and were trespassers.

10. The respondent excepts to Finding of Fact number 10 which is as follows:

"10. On the return trip from Houston to Philadelphia, which took from July 18, to 25, the conduct of the members of the Fort Worth's crew who had been on strike, was, moreover, exemplary. There were no recriminations and no breaches of discipline. Captain Rudan admitted that on the return trip the strikers conducted themselves 'in a competent manner,' and that he had no complaints. First Mate Helland testi-

fied that he felt that he had a safe crew when he sailed from Houston on July 18. Second Assistant Engineer Robinson testified that the strikers 'were a good crew on the return voyage, just as they always were a good crew.' Indeed, he explained that he spoke to the three strikers who were on his watch throughout the voyage, i. e., Ferguson, Braun and Hughes, and said to them: 'Well, boys, let's forget all about what happened. . . . Let's string along just as though nothing had happened,' and he concluded, 'they went home just as though nothing had happened.' The only complaint made by any of the officers as to the conduct of the strikers on the return voyage was that of First Mate Helland, who testified that the mess boy, Smith, would say Good Morning 'kind of half-hearted like.' "

on the ground that said finding of fact is irrelevant and not within the issues of this proceeding, and further, the master and the respondent had the lawful right to discharge all or any part of said crew who had breached their shipping articles and for any other just cause, either at the conclusion of the said voyage or at the time of the occurrences.

11. The respondent excepts to Finding of Fact number 11 which is as follows:

"11. Nevertheless, despite all this, during the return voyage, various officers of the ship spoke to the captain and recommended to him that certain of the strikers who were in their respective departments should be discharged upon the termination of the voyage. Consequently, after the ship docked in Philadelphia on July 25, 5 of the 13 members of the crew who had gone on strike on July 18 were discharged by various officers of the Fort Worth. The five to be discharged were the two able seamen, Warren and Pfuhl, the two oilers, Tracey and Ferguson, and the mess boy, Smith. The Fort Worth had docked at about noon

but the crew was not signed off until about 3 or 3:30 p. m. It was the custom of the respondent to sign the crew on again immediately after it was signed off, but in this instance it was not done and the five members of the crew were told of their discharges shortly after they signed off. It is necessary to emphasize that they were discharged upon the order of the captain as a result of a decision which he had definitely made after the conversations with his officers while the ship was still at sea. Chief engineer Norton testified he discharged Tracey and Ferguson before he even talked to Sherry, the marine superintendent of the respondent. First Mate Helland, who discharged Warren and Pfuhl, and Steward Kuhtreiber, who discharged Smith at about 5 P. M., which was about an hour later than the others had been discharged, did speak to Sherry before taking this action. But this was not to seek his authority but merely by way of giving him information. The captain admittedly had full authority to discharge any of the unlicensed members of the crew. Sherry, in any event, never interfered when he learned what was about to be done."

on the ground among other things, that the respondent's failure to permit the five members of the crew therein referred to, to sign articles for another voyage did not constitute a discharge of said employees.

12. Respondent excepts to Finding of Fact number 12 which is as follows:

"12. The striking members of the crew of the Fort Worth had apparently contemplated the possibility that they might be discharged after the ship reached its home port. On July 24th, while they were still at sea, they had had a meeting in the forecastle, at which they decided that they would go on strike if anyone of their number was discharged. When Warren, Pfuhl, Tracey, Ferguson, and Smith were dismissed after the ship

docked on July 25, the resolution that had been taken was put into execution. All the N. M. U. members of the crew who had not been discharged, with one exception, went on strike in protest against the action which had been taken by the respondent. The exception was Alexander A. Braun, who remained at work. Again the record indicates that a sit-down strike was intended but never put into execution. The striking members of the crew merely left the ship together with those who had been discharged."

on the ground, among other things, that said finding of fact is not supported by the evidence, is not relevant and on the ground that Warren, Pfuhl, Tracey, Ferguson and Smith were not discharged or dismissed and on the further ground that the other members of the crew who left the ship were not dismissed or discharged but voluntarily quit their employment.

13. Respondent excepts to Finding of Fact number 14 which is as follows:

"14. When about 5 p. m. of the day of the strike the captain and Schreider had seen that they could not induce the strikers to go back to work, they had sought the assistance of J. Newton Rayzor, a member of the law firm of Royston & Rayzor, which represented the respondent in maritime matters at Houston, and Rayzor had gotten in touch by telephone with Arthur J. Mandel, who represented the N. M. U. at Houston. It appears that both attorneys were at the time under the misapprehension that the Board still had under consideration the objections of the respondent to the manner in which the election on its ships had been conducted, and Rayzor induced Mandel to secure the release of the Fort Worth by persuading him that it would be best to let the crew return to work pending the determination of this question. The *quid pro quo* of this arrangement was a promise on the part of Rayzor that he would meet

with Mandel the next day to discuss the question of issuing passes to the Union's delegates, and that he personally would recommend to the respondent that such passes should be issued even though the validity of the election was not yet decided. Now, although nothing was said in so many words about not discharging any of the strikers, such a condition was implicit in the very nature of the arrangement, which obviously contemplated the maintenance of the *status quo*. Moreover, two facts stand out from the course of the negotiations which do reflect upon the conduct of some of those who represented the respondent."

on the ground among other things, that said finding of fact is not supported by the evidence, is contrary to law and is irrelevant.

14. The respondent excepts to Finding of Fact number 15 which is as follows:

"15. It appears that before calling Mandel, Rayzor made a long distance telephone call to Sherry, in which he told him that he was going to discuss the question of issuing passes with Mandel, whereupon Sherry authorized him to do so, although he told him at the same time that he would under no circumstances ever permit passes to be issued. The only excuse which Rayzor could give for not enlightening Mandel as to the attitude of Sherry, who was in active charge of the respondent's affairs, was the very inadequate one that he intended to go over his head to the president of the respondent. It is equally difficult to understand the conduct of Captain Rudan. He (as well as the other officers of the ship who testified) insisted that he never learned exactly on what terms the strike had been settled, despite the fact that he was present during at least part of the conversations. Yet he made his decision to discharge some of the strikers while his ship was still at sea. For all that appeared, he might be wrecking the

> negotiations which he knew were proceeding, and one of the terms of the settlement might have been that none of the strikers was to be discharged. It is highly significant that even after the Fort Worth docked, none of the officers of the vessel who talked to Sherry, from the captain to the steward, asked him about how the strike had been settled."

on the ground, among other things that said finding of fact is not supported by the evidence, is contrary to the evidence and is irrelevant.

15. Respondent excepts to Finding of Fact number 16 which is as follows:

> "16. The defense interposed by the respondent in its answer to justify the discharges of the five members of the crew of the Fort Worth is that since they had signed shipping articles at the port of Philadelphia for a trip from this port to Houston and return, they had no right to go on strike and disobey the lawful commands of their officers, and that, moreover, in execution of the strike they had taken unlawful possession of the ship. It has already been pointed out that the striking members of the Fort Worth's crew did not take possession of the vessel or interfere with its operation. They merely refused to work, and if they did anything with the vessel it was in the interest of assuring its safety. The position of the respondent that the N. M. U. members of the crew had no right to strike finds no support in the Act, which does not except maritime employment. The shipping laws must be read together with the provisions of the Act, which preserve the right to strike. This must be especially so when, as in this case, the strike had been indubitably precipitated by unfair labor practices. The strike of July 18 was the outcome of the respondent's refusal to engage in collective bargaining with the N. M. U., and the strike of July 25 was preceded not only by this unfair labor practice but by

the discriminatory discharges of the same day. It is necessary to point out also that while the crew of the Fort Worth had signed shipping articles, these were not compulsory under the shipping laws, since the respondent was engaged exclusively in coastwise trade, and hence that penalties otherwise applicable under the shipping laws could not apply. The respondent might have secured the discharge of the strikers in Houston, and there they themselves might have quit without incurring more than their loss of pay. But the respondent took no action in Houston; indeed, the strikers were not even logged. Moreover, by shipping them after the strike terminated, the officers necessarily forgave them for any dereliction of which they may have been guilty, and this quite in the absence of any express agreement against discrimination."

on the ground among other things, that said finding of fact is not supported by the evidence, is contrary to the evidence, and because the evidence shows that the thirteen members of the crew therein referred to wilfully disobeyed the lawful commands of the master and other officers on said steamship and from 8 o'clock a. m. to 7 o'clock p. m. on July 18th, 1938 continued such wilful disobedience and unlawfully took possession of said steamship or portions thereof, and furthermore that the findings with reference to the law applicable to the crew's obligations under their signed shipping articles are erroneous and contrary to said law and that the respondent's actions were in no wise any condonation.

16. The respondent excepts to Finding of Fact number 17 which is as follows:

"17. As a matter of fact, however, the testimony of the respondent's own witnesses demonstrates conclusively that the discharges of the five members of the Fort Worth's crew on July 25 could not have been due to the fact that they had gone on strike and refused to obey the orders of their superiors in violation of their

articles. If that had been the reason, the respondent would have discharged all 13 members of the crew who went on strike. Captain Rudan himself explained the logic of this position when he was asked whether the five men were not fired because they went on strike. 'It wasn't the sole reason,' he explained, 'because if that was the reason, there is no reason why they wouldn't have fired the whole thirteen men, so we had to consider other items with that.' The 'other items' in the case of three of the discharged strikers consisted of past derelictions or misdemeanors which the officers of the Fort Worth came to remember on the voyage back from Houston to Philadelphia and which they imparted to the captain in the conversations which they had with him on the return voyage when they recommended to him that certain men in their respective departments should be discharged."

on the ground among other things, that said finding of fact is not supported by the evidence, is contrary to the evidence and irrelevant.

17. Respondent excepts to Finding of Fact number 18 which is as follows:

"18. The 'other items' which were taken into consideration consisted of acts and omissions which the officers themselves admitted were not uncommon among sailors. It seems that Warren was guilty of drinking and profanity; that Pfuhl spilled paint in the course of his work; that Smith did not sweep and clean dishes as well as the steward, Kuhtreiber, desired, and sometimes would not talk to the cook, and yet, despite everything, was admittedly popular with the crew. It was, however, also disclosed that Pfuhl had been sought on a charge of stealing an automobile, but he was later cleared of this charge, and Sherry reshipped him although he knew that the charge was pending. It was shown also that Pfuhl had been convicted of petty lar-

ceny of some scrap iron in New Jersey in September 1937, and put on probation for 2 years, but this was apparently not known to Sherry or the officers when they discharged him. A similar lack of knowledge prevailed at the time with respect to some of the other derelictions. In view of the fact that Warren and Smith and even Pfuhl had been reshipped despite knowledge of their derelictions, and that the officers of the Fort Worth admitted that they had a good crew when they made the voyage after the strike, the reasons given for their discharges can hardly be accepted. Indeed, the officers of the Fort Worth admitted that they would not have been discharged if they had not participated in the strike."

on the ground among other things, that the said finding of fact is not supported by the evidence, is contrary to the evidence and is irrelevant.

18. Respondent excepts to Finding of Fact number 19 which is as follows:

"19. As far as Tracey and Ferguson are concerned, the officers of the Fort Worth had to admit that they were selected for discharge solely because of their acts during the strike. The second assistant engineer, Robinson, accused Tracey of 'threatening' him when he told the oiler that he was going to put the steam on deck himself. All Tracey did, however, was to ask him whether he intended to do so. Even Robinson's recollection of Tracey's statement is hardly that of a threat, for he testified that the latter said merely: 'You had better not. You will be sorry.' This charge of a threat is, moreover, entirely inconsistent with the orderliness of the strike, and on cross-examination Robinson made it clear that what really irked him was not Tracey's threatening language but his 'back talk.' He was asked this question: 'And did you recommend that Tracey be fired because he gave you back talk?'

and he answered, 'Absolutely.' In the case of Ferguson, Robinson could think of no reason why he should have been discharged. As a matter of fact, he did not recommend to Chief Engineer Norton that Ferguson should be discharged, and when he learned of his discharge in Philadelphia he expressed surprise to his chief. Ferguson was discharged as the result of a direct recommendation made by Norton to the captain."

on the ground among other things, that the said finding of fact is not supported by the evidence, is contrary to the evidence and irrelevant.

19. Respondent excepts to Finding of Fact number 20 which is as follows:

"20. On cross-examination, the Fort Worth's officers finally admitted their reasons for the five discharges. The reason in the case of Warren was the obvious fact that he had been the spokesman and apparent leader of the strikers. It was the fact that Pfuhl had had the temerity to join the strikers despite his personal record that made the respondent's officers decide to discharge him. 'After being lenient with him,' explained Captain Rudan, 'he had indulged in this disobedience down there.' The steward, Kuhtreiber, was especially annoyed with Smith and recommended his discharge because he had, so to speak, gone on strike behind his back, for, like Captain Rudan, Kuhtreiber was not on board when the strike started. Moreover, the steward also explicitly admitted that he recommended Smith for discharge only in order to teach him a lesson, and that as a matter of fact he intended to rehire him after he had been kept out for a few trips. The chief engineer, Norton, testified that he recommended to the captain that Ferguson be discharged, but not merely because he had disobeyed his orders. 'I would have overlooked that,' he explained, 'had he taken the fires until we got straightened out.'

According to Captain Rudan, the reason for the discharge not only of Ferguson but also of Tracey was that Norton had told him that 'they had been on watch at the time of the commencement of this what I consider disobedience, and if they had gone on watch at the time, that the rest of the men probably would have followed . . .''

on the ground among other things that the said finding of fact is not supported by the evidence, is contrary to the evidence and is irrelevant.

20. Respondent excepts to the Finding of Fact number 21 which is as follows:

"21. Although the respondent's officers admitted that there had been special reasons for selecting five of the strikers for discharge, they were more reticent when pressed as to whether they had not discussed the question of the relative responsibility of the strikers. But that they in fact did so is clear from the action they took. It is apparent that no one was discharged merely for striking. Yet the motives of the respondent's officers are not adequately described by saying even that they selected five of the strikers because of their conduct in connection with the strike. These were chosen, first, as a warning and an example to the other members of the crew, and second, because the strike evidenced that all five were the most determined and dangerous members of the N. M. U. Among the five who were selected are to be found all three of the Union's delegates on the Fort Worth; Warren, Tracey, and Smith were, respectively, deck, engine and steward department delegates on the Fort Worth. Only in the case of Pfuhl is there no indication in the record that his activity in connection with the strike was exceptional. But, as indicated, he had shown himself especially determined because he had joined the strikers despite the fact that his personal record should have made him careful."

on the ground among other things that the said finding of fact is not supported by the evidence, is contrary to the evidence and is irrelevant.

21. Respondent excepts to the Finding of Fact number 22 which is as follows:

> "22. The record shows, moreover, that the officers of the Fort Worth had a channel of information with respect to the union activities of the crew. Joseph Crassavaz, the boatswain, although he had apparently joined the strikers, came to Helland and reported to the first mate that the men would not go to work. During the strike, Crassavaz also imparted to Helland, obviously by way of extenuation, the fact that he had joined the Union only the night before. And during the return voyage he acquainted his superior with the news that he had found out that it was Pfuhl who had spilled paint on the deck. Crassavaz also went on strike July 25 when five of the members of the crew were discharged. But he was rehired after missing only one trip, and he missed this trip, explained Sherry, only because his reshipment could not in the confusion be conveniently arranged. Finally, it is necessary to stress the fact that the record contains undenied and unrebutted testimony that Sherry on occasion questioned applicants for employment concerning their union affiliation as well as other indications of anti-union hostility. The discriminatory discharges of the five members of the Fort Worth's crew were only a further indication of this hostility."

on the ground among other things, that the said finding of fact is not supported by the evidence, is contrary to the evidence and is irrelevant.

22. Respondent excepts to the Finding of Fact number 23 which is as follows:

> "23. Thus, Joseph G. Warren, John Pfuhl, Jr., John Joseph Tracey, Elmer Joseph Ferguson and

Edward W. Smith, all employees of the respondent, were discharged by agents of the respondent on July 25, 1938, and have since been refused employment by the respondent for the reason that they had joined the National Maritime Union of America, affiliated with the C. I. C., and engaged in concerted activities for the purpose of collective bargaining and other mutual aid or protection, and more particularly for the reason that in protest against the unfair labor practices of the respondent they had gone on strike on July 18, 1938, with other employees of the respondent, who, however, were not discharged for their participation in the same strike. By the said discharges and refusals to reemploy the said employees, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act."

on the ground among other things, that the said finding of fact is not supported by the evidence, is contrary to the evidence and is irrelevant.

23. Respondent excepts to the Finding of Fact number 24 which is as follows:

"24. It was stipulated by counsel for all parties that the value of maintenance of a seaman on shipboard on the respondent's vessels was $2.35 per day. The record shows that at the time of the hearing, Joseph G. Warren, the only one of the five strikers to be discharged who did not appear to testify, had employment at the time of the hearing as third mate on a vessel of the Gulf Refining Company, but that he left the ship at Port Arthur, Texas. But neither the terms of his employment nor the reason for his leaving appear, and it is possible that he may have been on a relief voyage. John Pfuhl, Jr., has had since his discharge two temporary jobs, which have netted him $182.50, plus the value of his maintenance on ship-

board in one of the jobs which consisted of a relief trip on a vessel of the Atlantic Refining Company, Edward W. Smith has earned $36 on a temporary job arising from a trial run of a United States cruiser. John Joseph Tracey and Elmer Joseph Ferguson have had no employment since their discharge by the respondent. Moreover, Ferguson was deprived by the respondent of a $25 bonus which was due him because he had worked for the respondent continuously for over a year, for the reason that he had participated in the strike of July 18, 1938. Thus the record does not show that any of the five discharged employees has secured substantially equivalent employment. The reinstatement of John Pfuhl, Jr., will, however, not be recommended because of his personal record."

on the ground among other things, that the said finding of fact is not supported by the evidence, is contrary to the evidence and is irrelevant.

24. Respondent excepts to Finding of Fact number 27 which is as follows:

"27. The activities of the respondent, set forth in Section III above, occurring in connection with the operations of the respondent described in Section IV herein, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce."

on the ground among other things that said finding of fact is not supported by the evidence.

25. Respondent excepts to Conclusion number 1 which is as follows:

"1. Respondent, by refusing at all times since at least the middle of February 1938 to bargain collectively with respect to rates of pay, wages, hours of

employment, and other conditions of employment, with National Maritime Union of America, affiliated with the C. I. O., a labor organization within the meaning of the National Labor Relations Act, as the exclusive representative of the unlicensed personnel employed in its deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated by the respondent out of Atlantic and Gulf ports, has engaged in an unfair labor practice affecting commerce within the meaning of Section 8 (5) and Section 2 (6) and (7) of the National Labor Relations Act."

on the ground that said Conclusion is incorrect, unsound, not in accord with the law and not supported by the evidence.

26. Respondent excepts to Conclusion number 2 which is as follows:

"2. Respondent, by discharging on July 25, 1938, Joseph G. Warren, John Pfuhl, Jr., John Joseph Tracey, Elmer Joseph Ferguson, and Edward W. Smith, all employees of the respondent, and by refusing to re-employ them at all times since then, for the reason that they had joined the National Maritime Union of America, affiliated with the C. I. O., and engaged in concerted activities for the purpose of collective bargaining and other mutual aid or protection, and more particularly for the reason that in protest against the unfair labor practices by the respondent they had gone on strike on July 18, 1938, with other employees of the respondent, who, however, were not discharged because of their participation in the same strike, has discriminated with respect to the hire and tenure of employment of the said five employees, and had discouraged membership in the labor organization known as National Maritime Union of America, affil-

iated with the C. I. O., and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8 (3) and Section 2 (6) and (7) of the National Labor Relations Act."

on the ground that said Conclusion is incorrect, unsound, not in accord with the law and not supported by the evidence.

27. Respondent excepts to Conclusion number 3 which is as follows:

"3. Respondent, by seeking information as to the union affiliation or activities of employees or applicants for employment, and by reason of the omissions and affirmative acts described in paragraphs 1 and 2 of these conclusions, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has thereby committed unfair labor practices affecting commerce within the meaning of Section 8 (1) of the National Labor Relations Act."

on the ground that said Conclusion is incorrect, unsound, not in accord with the law and not supported by the evidence.

28. Respondent excepts to the Trial Examiner's recommendation number 1 which is as follows:

"1. Cease and desist from:

(a) Refusing to bargain collectively with respect to rates of pay, wages, hours of employment, or other conditions of employment with National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engi-

neers who hold licenses, on vessels operated by the respondent out of Atlantic and Gulf ports;

(b) Discouraging membership in National Maritime Union of America, affiliated with the C. I. O., or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment because of membership or activity in connection with any such labor organization;

(c) Interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act."

on the ground that said recommendation is contrary to law, is not supported by the evidence and is not within the issues of this proceeding.

29. Respondent excepts to the Trial Examiner's recommendation number 2 which is as follows:

"2. Take the following affirmative action in order to effectuate the policies of the Act:

(a) Upon request, bargain collectively with respect to rates of pay, wages, hours of employment, or other conditions of employment, with National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in its deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated by the respondent out of Atlantic and Gulf ports;

(b) Offer upon the first available sailing date to Joseph G. Warren, John Joseph Tracey, Elmer Joseph Ferguson, and Edward W. Smith, four of the members of the crew of the S. S. City of Fort Worth who were discharged by the respondent on July 25, 1938, immediate and full reinstatement to their former positions without prejudice to their seniority or other rights and privileges, discharging, if necessary, those who have been hired to replace them;

(c) Make whole Joseph G. Warren, John Pfuhl, Jr., John Joseph Tracey, Elmer Joseph Ferguson, and Edward W. Smith, the members of the crew of the S. S. City of Fort Worth who were discharged by the respondent on July 25, 1938, for any losses of pay they may have suffered by reason of their discharge, by payment to each of them except, John Pfuhl, Jr., of a sum of money equal to that which each would normally have earned from the date of his discharge to the date of the respondent's offer of reinstatement —including therein the value of his maintenance on shipboard calculated at the rate of $2.35 per day, and adding thereto in the case of Elmer Joseph Ferguson the bonus of $25 due him on the date of his discharge —less any amount which represents the real value of his earnings during such period;

(d) Make whole John Pfuhl, Jr. by payment to him of a sum of money equal to that which he would normally have earned from the date of his discharge to the date reinstatement is offered by the respondent to the other members of the crew of the S. S. City of Fort Worth who were discharged by the respondent on July 25, 1938—including therein the value of his maintenance on shipboard calculated at the rate of $2.35 per day—less any amount which represents the real value of his earnings during such period;

(e) Upon application, and upon the first available sailing date after such application, offer to William

Reeves, Henry A. Latham, William Godfrey Burns, Edward B. Hughes, Gordon Neeley, and Charles C. Holt, members of the crew of the S. S. City of Fort Worth, who went on strike on July 25, 1938, in protest against the unfair labor practices of the respondent, immediate and full reinstatement to their former positions without prejudice to their seniority or other rights and privileges, dismissing, if necessary, those who have been hired to replace them;

(f) Make whole the said William Reeves, Henry A. Latham, William Godfrey Burns, Edward B. Hughes, Gordon Neeley, and Charles C. Holt, members of the crew of the S. S. City of Fort Worth who went on strike on July 25, 1938, in protest against the unfair labor practices of the respondent, for any loss of pay they may suffer by reason of any refusal of their applications for reinstatement, in accordance with paragraph (d) herein, by payment to each of them, respectively, of a sum equal to that which each of them would normally have earned during the period from the date of any such refusal of their application to the date of reinstatement—including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day—less any amount which represents the real value of his earnings during such period;

(g) Post immediately notices to its employees in conspicuous places on its docks and vessels, stating that the respondent will cease and desist in the manner aforesaid, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting;

(h) Notify the Regional Director for the Fourth Region in writing within ten (10) days from the date of the service of this report what steps the respondent has taken to comply with its recommendations.

It is finally recommended that unless the respondent notifies the said Regional Director in writing

within ten (10) days of the service of this report that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board, and that said Board issue an order requiring the respondent to take the action aforesaid."

on the ground that said recommendation is contrary to law and not supported by the evidence and is not within the issues of this proceeding.

30. Respondent excepts to the action of the Trial Examiner in failing to dismiss the Complaint, because the Board had no jurisdiction in the premises due to the fact that the certification by the Board of the National Maritime Union of America as the bargaining agency was invalid, erroneous, contrary to law and unenforceable.

31. Respondent excepts to the action of the Trial Examiner in failing to dismiss the Complaint for the reasons set forth in the Answer of the petitioner and its motion to dismiss the said Complaint made in writing at the conclusion of the evidence offered by the Board.

32. Respondent excepts to the action of the Trial Examiner in denying respondent's motion to strike out certain testimony taken at the hearing, which testimony is set forth in respondent's written motion filed at the conclusion of respondent's testimony, for the reasons set forth by counsel for the Respondent and appearing in the official report of proceedings.

33. Respondent excepts to the action of the Trial Examiner in overruling the respondent's objection to a motion of counsel for the Board to conform the complaint to the proof.

34. The Respondent excepts to the Intermediate Report in finding that the certification by the Board of the National Maritime Union of America was valid or effective, in that said certification was based upon the Board's

erroneous ruling that in the absence of consent by the labor organization participating in the election representatives of the respondent had no right to be present while the election was being conducted.

35. The Respondent excepts to the action of the Trial Examiner in failing to include in his Findings of Fact certain facts favorable to the Respondent which were either wholly uncontroverted in the record or were established by substantially undisputed evidence.

36. The Respondent excepts to the action of the Trial Examiner in failing to find that the thirteen members of the crew named in the Intermediate Report on July 18th, 1938, after having signed shipping articles at the Port of Philadelphia, Pennsylvania, under the Shipping Laws of the United States for a complete voyage on the Respondent's steamship City of Fort Worth from the Port of Philadelphia and return to that port and while on board said steamship at the Port of Houston, wilfully disobeyed the lawful commands of the master and other officers on said steamship and from about 8 o'clock a. m. to 7 o'clock p. m. on July 18th, 1938, continued such wilful disobedience and unlawfully took possession of said steamship or portions thereof and refused to perform their proper duties on board said steamship.

37. The Respondent excepts to the Intermediate Report in failing to find that the wilful disobedience of the members of the crew to the lawful commands of the master and other officers on said steamship justified the discharge of or failure to re-hire any or all of the members of the crew who participated in such disobedience.

38. The Respondent excepts to the Intermediate Report in failing to find that the wilful disobedience of the members of the crew to the lawful commands of the master and other officers of said steamship was a violation of the shipping articles which constituted the contract of employment and

such breach of contract justified the discharge of or failure to re-hire any or all of the members of the crew who participated in such disobedience.

39. The Respondent excepts to the Intermediate Report in finding that the thirteen members of the crew were not engaged in a sit-down strike whereas said members of the crew testified expressly that they had engaged in a sit-down strike and were in fact so engaged.

40. The Respondent excepts to the Intermediate Report on the ground that the Board has not met the burden of proof that the employees were discharged for union activities.

41. The Respondent excepts to the Intermediate Report on the ground that the findings are arrived at by accepting the evidence offered by the Board and totally disregarding the evidence offered by the Respondent.

42. The Respondent excepts to the Intermediate Report on the ground that the findings are not based on the evidence, but on inferences which are not the result of a judicial process of reasoning.

43. The Respondent excepts to the Intermediate Report in finding that members of the crew were discharged at the conclusion of the voyage, because they did not then and there sign on other shipping articles, since it was established that members of the crew customarily sign shipping articles for only one specific voyage, so that the employee relationship terminates at the end of each voyage.

44. Respondent excepts to said Intermediate Report as denying to the Respondent due process of law guaranteed to the Respondent by the 5th Amendment to the Constitution of the United States in that the Respondent was not afforded as to the charges made against it in the complaint, a hearing in accordance with the usual and ordinarily accepted rules of legal procedure and the law of the land,

hearsay, rumor and wholly irrelevant, and incompetent evidence being admitted by the Trial Examiner in support of the charges against Respondent and findings of fact being based solely thereon.

45. Respondent excepts to the Intermediate Report as being a denial to the Respondent of due process of law because under the system of rules of procedure governing the hearing herein and established by the National Labor Relations Act, the Board permitted its own agents to act as trial examiner and attorneys for the Board thus denying to the Respondent a hearing in accordance with the usual and ordinary accepted rules of legal procedure and the law of the land, and therefore, denying to the respondent due process of law as guaranteed to it by the 5th Amendment of the Constitution of the United States.

46. Respondent excepts to the Intermediate Report as wholly beyond the authority vested in the Board by the National Labor Relations Act, and as arbitrary and prejudicial in character and an abuse of discretion upon the part of the Trial Examiner.

47. If the National Labor Relations Act is construed as justifying the recommendations of the Trial Examiner as hereinbefore set forth, the Act is unconstitutional and void as denying freedom of speech in violation of the 1st Amendment of the Constitution of the United States.

48. Respondent excepts to the Intermediate Report on the ground that the Trial Examiner in his recommendations, even if the Findings of Fact made by the Examiner are true, which the respondent denies, does not justify or provide a basis in law or fact for such an order.

49. Respondent excepts to the Intermediate Report as prejudicial to the Respondent in other respects and particulars in its rulings upon questions raised in the hearing of this case to which rulings the Respondent duly objected, all as appears in the record herein.

50. The National Labor Relations Act is, in its terms and provisions, and as it is sought to have it applied and enforced by the Board in this case, unconstitutional and void in that it denies to the employer (herein the Respondent) due process of law, freedom of contract and freedom of speech and also in that it seeks to delegate unlawfully to the Labor Board the rights to exercise judicial and legislative functions.

51. Respondent excepts to the Intermediate Report as being a denial to the Respondent of due process of law because the procedure, practices and method of determining Findings of Fact, Conclusions and Recommendations, including the procedure, practices and method of determining the Findings, Conclusions and Recommendations in this case are not in accordance with the usual and ordinary accepted rules of legal procedure and the law of the land and therefore deny to the respondent due process of law as guaranteed to it by the 5th Amendment of the Constitution of the United States.

52. Respondent excepts to the Intermediate Report on the ground that the proposed findings of fact, conclusions and recommendations were not served upon Respondent or its attorneys prior to the filing of said Intermediate Report.

53. Respondent hereby requests an oral hearing before the National Labor Relations Board and leave to file briefs with the National Labor Relations Board.

ADAMS, CHILDS, MCKAIG & LUKENS,
JOSEPH W. HENDERSON,
Attorneys for Respondent, Southern Steamship Company.

March 8th, 1939.

Decision and Order of the Board are set forth as Exhibit "A" to Petition to Review at page 14 of this Appendix.

INTERMEDIATE REPORT UPON SECRET BALLOT.

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

CASE NO. R-157.

In the Matter of

Southern Steamship Company
(American France, et al.)

and

National Maritime Union of America
(Affiliated with the C. I. O.)

and

International Seamen's Union of America, or Its Successor
(Affiliated with the A. F. of L.).

Pursuant to the Rules and Regulations of the National Labor Relations Board, Series 1, as amended, Article III, Section 9, the undersigned hereby makes the following intermediate report.

On July 16, 1937 (amended decisions thereto on August 16, 1937, September 11, 1937, September 17, 1937, and November 10, 1937), the National Labor Relations Board, after a hearing, directed that a secret ballot be conducted "among all unlicensed personnel employed in the deck, engine, and stewards departments (except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses), on vessels operated out of Atlantic and Gulf ports" owned by numerous specified steamship lines, among which was included the Southern Steamship Company. Further qualifications as to eligible voters were prescribed as follows by the National Labor Relations Board: "Those who are employed on the ship when it is posted and who are still employed in one of these

capacities (mentioned above) at the time balloting takes place, provided, however, that if any such person be transferred from one ship to another ship of the same company during the time the election among the employees of that company is being held, he shall be entitled to vote but once."

The ballot used in the conduct of said secret ballot was in the form of the sample ballot attached to and made a part of the Notice of Election. Said secret ballot was conducted in a manner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and in conformity with the Notice of Election, copy attached hereto, marked Exhibit A, and made a part hereof. Full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

Lists of those eligible to vote were posted on the vessels immediately prior to sailing, and the Notice of Election and Supplemental Notice of Election were posted in prominent places at the same time. Following is a list of the vessels owned by the Company coming within the specifications set forth in the aforementioned decision of the National Labor Relations Board, together with the place and date of balloting of each vessel:

Name of Vessel	*Place of Balloting*	*Date of Balloting*
City of Philadelphia	Philadelphia, Pa.	10/15/37
City of Houston	Philadelphia, Pa.	10/13/37
City of West Texas	Philadelphia, Pa.	10/19/37
City of San Antonio	Houston, Texas	10/21/37
City of Wichita Falls	Philadelphia, Pa.	10/22/37
City of Fort Worth	Philadelphia, Pa.	10/26/37
City of Dallas	Philadelphia, Pa.	10/29/37

At the conclusion of the balloting of each of the above vessels, the interested parties certified that the balloting was conducted in accordance with the specifications issued by the National Labor Relations Board, and in a fair and impartial manner.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and that the ballots were duly and fairly counted under the supervision of her agents and representatives of the interested parties, and that statements to this effect from the representatives of the interested parties have been filed with the undersigned, and are part of the record of the National Labor Relations Board.

The undersigned hereby makes her findings with respect to the results of said secret ballot:

Total Number Eligible to Vote	134
Total Number of Ballots Cast	132
Total Number of Votes in favor of the National Maritime Union of America, affiliated with the C. I. O.	73
Total Number of Votes in favor of the International Seamen's Union of America or its successor, affiliated with the A. F. of L.	4
Total Number of Votes in favor of neither of the aforementioned labor organizations	51
Total Number of Blank Votes	1
Total Number of Void Ballots	0
Total Number of Challenged Ballots	3

According to the Rules and Regulations of the National Labor Relations Board, five days after the receipt of this report are allowed for the filing of protests against this report. At the end of this period, the objections to the conduct of this election, received from the Company on October 29, 1937 and December 27, 1937, will be submitted to the National Labor Relations Board at Washington, D. C., along with any other protests that may be filed.

Signed at New York, N. Y., this 3rd day of January, 1938.

/s/ ELINORE M. HERRICK,
Regional Director, 2nd Region,
National Labor Relations Board.

OBJECTIONS TO BALLOT AND INTERMEDIATE REPORT.

And Now, January 7th, 1938, Southern Steamship Company objects to the Ballot and to the Intermediate Report made at New York, New York, on the 3rd day of January, 1938, by Elinore M. Herrick, Regional Director for the Second Region, National Labor Relations Board as follows:

1. To the finding relating to the conduct of said ballot, set forth in the Intermediate Report that "Full opportunity was accorded to all parties to this investigation to participate therein and to make challenges".

2. To the finding in the Intermediate Report that "At the conclusion of the balloting of each of the above vessels, the interested parties certified that the balloting was conducted in accordance with the specifications issued by the National Labor Relations Board, and in a fair and impartial manner".

3. To the certification by the Regional Director for the Second Region, National Labor Relations Board set forth in the Intermediate Report ". . . said secret ballot was fairly and impartially conducted and that the ballots were duly and fairly counted under the supervision of her agents and representatives of the interested parties, and that statements to this effect from the representatives of the interested parties have been filed with the undersigned, and are part of the record of the National Labor Relations Board" and Southern Steamship Company avers that on the contrary no representative of this Company signed any certificate or statement to the effect that said secret ballot was fairly or impartially conducted and that the ballots were duly and fairly counted.

4. To the finding set forth in the Intermediate Report with respect to the results of said secret ballot as follows:

"Total Number Eligible to Vote	134
Total Number of Ballots cast	132
Total Number of Votes in favor of the National Maritime Union of America, affiliated with the C. I. O.	73
Total Number of Votes in favor of the International Seamen's Union of America or its successor, affiliated with the A. F. of L.	4
Total Number of Votes in favor of neither of the aforementioned labor organizations	51
Total Number of Blank Votes	1
Total Number of Void Ballots	0
Total Number of Challenged Ballots	3"

5. Southern Steamship Company further objects to the ballot and to the Intermediate Report on the ground that its chosen representative was excluded by the agent of the National Labor Relations Board from the secret ballot taken on the steamship City of Houston on October 13th, 1937 and was denied access to said vessel owned by Southern Steamship Company during the conduct of said secret ballot and was not permitted to observe the conduct of said secret ballot or to identify voters.

6. Southern Steamship Company further objects to the ballot and to the Intermediate Report on the ground that no representative of Southern Steamship Company was permitted to have access to the steamship City of Houston owned by Southern Steamship Company during the conduct of said secret ballot taken on said vessel on October 13th, 1937 and no representative of Southern Steamship Company was permitted to observe the conduct of said secret ballot or to identify voters.

WHEREFORE Southern Steamship Company prays that said ballot and Intermediate Report thereon be set aside and declared null and void and that Southern Steamship

Company may have such other and further relief as may b
proper.

/s/ EDGAR S. MCKAIG for
ADAMS, CHILDS, MCKAIG & LUKENS,
Attorneys for Southern Steamshi
Company.

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

W. B. MCKINNEY being duly sworn according to law
deposes and says that he is President of SOUTHERN STEAM-
SHIP COMPANY and is duly authorized to make this affidavi
on its behalf; that the facts set forth in the foregoing Objec
tions are true and correct to the best of his knowledge, in
formation and belief.

/s/ WM. B. MCKINNEY.

Sworn to and subscribed before me this 7th day o
January, A. D. 1938.

/s/ J. E. WILLIAMS,
Notary Public
My Commission expires March 9, 1939

**Supplemental Decision, Order and Certification of Rep
resentatives are set forth as Board's Exhibit No. 4, at page
671 of this Appendix.**

[fol. 765] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1940

No. 7435

SOUTHERN STEAMSHIP COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

PETITION OF NATIONAL MARITIME UNION OF AMERICA FOR LEAVE TO INTERVENE AND BE MADE A PARTY

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The petition of the National Maritime Union of America, by William L. Standard, Esq., its attorney, respectfully shows and alleges:

First. The petitioner, the National Maritime Union of America, is an unincorporated labor association, having a membership of approximately 50,000 seamen, with offices and places of business throughout the maritime States of the United States, and with its principal office and place of business in the City and State of New York.

Second. That the proceedings sought to be reviewed herein by the Southern Steamship Company were initiated by the National Labor Relations Board on charges duly filed on behalf of the aforesaid National Maritime Union of America.

Third. That thereafter hearings were conducted by the National Labor Relations Board, at which the Southern Steamship Company was the respondent and the National Maritime Union of America was the complainant; that the said National Maritime Union of America was a party to [fol. 766] the proceedings and, by its counsel, actively participated in the said hearings.

Fourth. That thereafter the trial examiner, appointed by the National Labor Relations Board to preside at these hearings, issued an intermediate report and recommendations; that the Southern Steamship Company sought to

reverse this intermediate report and the recommendations made by the trial examiner, and the case was argued before the National Labor Relations Board at Washington, D. C.; that counsel for the National Maritime Union of America, together with counsel for the Southern Steamship Company, appeared before the National Labor Relations Board for oral argument on the intermediate report and recommendations filed by the trial examiner.

Fifth. Thereafter the National Labor Relations Board issued an order directing the Southern Steamship Company, among other things, to cease discouraging membership in the National Maritime Union of America, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating with regard to their hire and tenure of employment; to bargain collectively, upon request, with the National Maritime Union of America; and to offer to reinstate, with back pay and maintenance, certain members of said National Maritime Union of America.

Sixth. That the Southern Steamship Company seeks, in this suit, to review and set aside the aforementioned order issued by the National Labor Relations Board on April 22d, 1940.

Seventh. That while the nominal parties to this proceeding are the National Labor Relations Board and the Southern Steamship Company, which filed the petition for review, the National Maritime Union of America has a substantial legal and equitable interest in this proceeding and in the [fol. 767] outcome thereof. As appears more fully in the order sought to be set aside, numerous substantial rights of the National Maritime Union of America are affected thereby, including, among other things, the right of the National Maritime Union of America to bargain collectively on behalf of the unlicensed personnel employed by the Southern Steamship Company on its vessels, the right to reinstatement in the employ of the Southern Steamship Company of a substantial number of seamen who are members of the aforesaid union.

Wherefore, the National Maritime Union of America respectfully petitions this Honorable Court for leave to intervene and be made a party to the above-entitled suit,

for all purposes, for leave to argue orally before this Court, and for leave to file its brief.

Dated: New York, New York, July 13th, 1940.

National Maritime Union of America, by Joseph Cuna, President, Intervening Petitioner, William L. Standard, General Counsel to National Maritime Union of America, Office & P. O. Address, 291 Broadway, Borough of Manhattan, City of New York.

Received & Filed Aug. 2, 1940. Wm. P. Rowland, Clerk.

[fol. 768] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 7435

SOUTHERN STEAMSHIP COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

Before Maris, Clark and Jones, Circuit Judges

Upon consideration of the petition of William L. Standard, Esq.,

It is hereby Ordered that the National Maritime Union of America be, and the same is granted leave to intervene and be made a party respondent in the above entitled cause.

Philadelphia, September 16, 1940.

Albert B. Maris, Circuit Judge.

Endorsements—Order granting leave to National Maritime Union to Intervene as a Party Respondent. Received & Filed Sept. 16, 1940. Wm. P. Rowland, Clerk.

[fol. 769] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1940

No. 7435

SOUTHERN STEAMSHIP COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

And afterwards, to wit, the 8th day of October, 1940, come the parties aforesaid by their counsel aforesaid, and

this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Jr., Honorable Albert B. Maris and Honorable William Clark, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

[fol. 770] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 7435

SOUTHERN STEAMSHIP COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

Before Biggs, Maris and Clark, Circuit Judges

And Now, To Wit, this 7th day of February, 1941, it is hereby Ordered that the above entitled case be restored to the argument list for rehearing and that the reargument be fixed for Thursday, February 20, 1941, before the court en banc.

By the Court, John Biggs, Jr., Circuit Judge.

Endorsements: Order Directing Reargument Before the Court en banc. Received & Filed Feb. 7, 1941. Wm. P. Rowland, Clerk.

[fol. 771] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1940

No. 7435

SOUTHERN STEAMSHIP COMPANY, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

And afterwards, to wit, the 20th day of February, 1941, come the parties aforesaid by their counsel aforesaid, and this case being called for reargument sur pleadings and briefs, before the Honorable John Biggs, Jr., Honorable

Albert B. Maris, Honorable William Clark, Honorable Charles Alvin Jones, and Honorable Herbert F. Goodrich, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 6th day of May, 1941, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 772] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1940

No. 7435

SOUTHERN STEAMSHIP COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review and Set Aside an Order of the National Labor Relations Board

OPINION—Filed May 6, 1941

Before Biggs, Maris, Clark, Jones and Goodrich, Circuit Judges

MARIS, Circuit Judge:

This is a petition by the Southern Steamship Company to review and set aside an order of the National Labor Relations Board directing the Company to cease and desist from certain unfair labor practices in which the Board found it had engaged, to bargain collectively with the National Maritime Union of America as the exclusive representative of a specified unit of its employees, to offer reinstatement with back pay to five employees discriminatorily discharged, and, upon application to reinstate certain striking employees.

Following a hearing upon a petition to certify collective bargaining representatives the Board on July 16, 1937 di-
[fol. 773] rected an election to be held by a unit of the Company's employees consisting of the unlicensed personnel employed in the deck, engine and stewards' departments on vessels operated out of Atlantic and Gulf ports, except

wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses. The election was held on the Company's seven vessels in October 1937 and disclosed a majority in favor of the National Maritime Union of America. On January 26, 1938 the Board certified the Union as the exclusive bargaining representative of the employees in the unit mentioned.

Shortly after January 26, 1938 and at various times thereafter officers of the Union sought to arrange collective bargaining conferences with the Company. The Company, however, at all times refused to bargain with them. This it admits, although it denies that any effort was made by the Union to open negotiations prior to August 18, 1938. The Board, however, found upon substantial evidence that such efforts were made as early as the end of January or the beginning of February, 1938.

In defense of its refusal to engage in collective bargaining with the Union the Company contends that the designation of the Union was invalid because the election was improperly conducted. Its complaint is that the Board at the election held on the first of its vessels refused, in the absence of consent of the labor organizations involved, to permit the Company's representatives to be present to identify voters and to see that the election was properly conducted. At the elections held on the six other vessels such consent was given and the Company's representatives were present.

A certification proceeding is of a non-adversary, fact-finding character in which the Board plays the part of a disinterested investigator seeking merely to ascertain the desires of the employees as to their representation. Section 9 (c) of the National Labor Relations Act (29 U. S. C. A. § 159 (c)) confers a wide discretion upon the Board as [fol. 774] to the manner in which this investigation shall be made. The Board may take a secret ballot of employees or utilize any other suitable method. It may, of course, call upon representatives of the employer to assist it in identifying employees appearing to vote. On the other hand it may take the view, as it evidently did in this instance, that since the presence of such representatives, unless consented to, might operate in some degree to coerce the employees and prevent them from expressing their free choice, some other means of identifying voters should be employed. The Act confers no right upon the employer to have its representatives present and it is obvious that their presence is not

essential to a fair election. Indeed it is not contended in the present instance that any person voted who was not entitled to do so or that the election was conducted unfairly. The action of the Board in excluding the Company's representatives was accordingly within its discretionary power. Marlin-Rockwell Corporation v. National Labor Relations Board, 116 F. 2d 586.

It follows that the Company was guilty of an unfair labor practice in refusing to bargain with the Union as the chosen representative of its employees and that the Board rightly ordered the Company to cease and desist from this unfair labor practice and, upon request, to bargain collectively with the Union as the exclusive representative of its employees included in the bargaining unit already described.

On July 17, 1938 one of the Company's vessels, the City of Fort Worth, was at dock at Houston, Texas, in the course of a voyage from Philadelphia to Houston and return. On that day thirteen unlicensed seamen of the vessel met at the union hall in Houston to find out what had been accomplished by way of obtaining a bargaining conference with the Company and passes enabling Union delegates to board its ships when in port. Upon being informed of the Company's refusal to meet or bargain with the Union the men unanimously voted to go on strike the following day [fol. 775] in order to compel the Company to recognize the Union and issue boarding passes to its delegates.

At 8 o'clock A. M. on the next day, July 18th, while the vessel was moored to the dock at Houston, the strike was begun when Tracey, an oiler, failed to turn the steam "on deck" for the purpose of loading cargo. Pool, the first assistant engineer, discovered the failure of steam and was told by Tracey that the ship's unlicensed personnel was on strike for Union recognition and the issuance of boarding passes. Pool then said that he would put the steam on deck himself, and Tracey replied that in that case he would "have to take the firemen out of the fire room." When Pool turned the steam on, Tracey called upon the fireman on duty, Braun, a member of the Union, to join the strike, which he did. At this time Ferguson, a fireman, appeared to relieve Braun whose watch had ended. But Ferguson, who was also a Union member, refused to tend the fires and he and Braun promptly left to join the eleven other strikers who were seated on the poop deck, the general meeting place of the

seamen when off duty. The second assistant engineer immediately took over the care of the fires and the ship's officers, with the assistance of the six unlicensed seamen who did not join the strike, then proceeded with the necessary operations for the loading of cargo.

At about 10.30 o'clock A. M. the ship's master, Captain Rudan, came on board. He at once informed the strikers that their conduct was in violation of the ship's articles which they had signed, and ordered them individually and collectively, to "turn to", which they each and all refused to do, Warren, their spokesman, telling him that they were striking for Union recognition and boarding passes. Captain Rudan then brought aboard a deputy United States Shipping Commissioner who informed the strikers that according to their articles they had agreed "to be obedient to the lawful commands of the master" and warned them that they were "subject to being logged two days for one" for [fol. 776] not obeying orders. The men, however, refused to abandon the strike. Throughout the day they remained seated on the poop deck in an orderly manner. At no time were they ordered to leave the vessel; on the contrary they were, in regular course, served their mid-day meal by one of their own number, Smith, a mess boy.

Late in the same afternoon, the Company's local attorney, after telephoning its superintendent at Philadelphia, advised the Union's attorney that if the strike were called off he would recommend that the Company issue boarding passes to the Union's shore delegates, action concededly tantamount to Union recognition. Relying upon this promise the Union's attorney advised the men to terminate the strike which they did at 7 o'clock P. M. and resumed their stations. Finding the foregoing facts upon virtually undisputed evidence, the Board properly concluded that the strike was caused by the Company's unfair labor practice in refusing to recognize and bargain with the Union.

The strikers having resumed their duties with the approval and consent of Captain Rudan and the other officers, the ship sailed on schedule the same night. During the return voyage to Philadelphia they performed their duties satisfactorily. Nevertheless Captain Rudan, after consulting the ship's officers, decided not to reship five of the strikers, Warren, Tracey, Ferguson, Pfuhl and Smith. Accordingly when the vessel docked at Philadelphia on July 25th and the crew signed off the shipping articles, these

five men were informed that they would not be reshipped. During the return voyage the Union members of the crew had decided to strike if any one of their number were to be discharged upon arrival at Philadelphia. Accordingly when the other Union members of the crew learned of the discharge of their five fellow members, seven of them, Crassavaz, Reeves, Latham, Burns, Hughes, Neeley and Holt, left the ship in protest. One of them, Crassavaz, subsequently reshipped.

[fol. 777] The Board found that the five seamen were discharged because of their active participation in the strike of July 18th, that their discharge constituted a violation of the Act, and that it was because of their unlawful discharge that the seven other seamen went out on strike on July 25th. The Board accordingly ordered the Company to offer reinstatement with back pay to the five seamen who were discharged and, upon application, to offer reinstatement to the seamen who went out on strike on July 25th. The Company strongly urges that the order should be set aside because the five seamen were not discharged since their employment relation automatically ended when they signed off the shipping articles on July 25th, and because, if they were discharged, their discharge was warranted for reasons not connected with the strike, and in any case their discharge was justified since they had participated in an unlawful "sit-down" strike and had as seamen breached their shipping articles by participating in it.

The statute (46 U. S. C. A. §§ 563, 574) requires that seamen sign shipping articles at the beginning of each voyage and sign off the articles at its conclusion. The statute, however, was for the protection of seamen and was not intended "to forbid the parties from mutually undertaking to assure a crew the right to continue as employees and to re-sign if it desires after signing off articles at a voyage's end." National Labor Relations Board v. Waterman Steamship Corp., 309 U. S. 206, 212. In the present case the Board found that the tenure of employment of the Company's seamen was not terminated by the mere expiration of shipping articles. This finding is fully supported by the evidence that new articles are ordinarily signed as the old articles are signed off and that in any case the seamen consider themselves engaged for the new voyage unless notified to the contrary. In this connection it is quite significant that the captain and other ship's officers

in their testimony referred to the five men as having been "discharged" or "fired." All five had been previously [fol. 778] employed for periods varying from six weeks to eighteen months. We find no error in the Board's conclusion that they remained employees after the expiration of the voyage and that they were discharged by the Company.

Nor is there merit in the Company's contention that the men were discharged for reasons unconnected with the strike at Houston on July 18th. There is ample evidence to support the Board's finding in this respect. Indeed the Company's officers frankly gave as a principal reason for the discharges the refusal of the men to obey the ship's officers during the strike, and the other reasons now urged were not suggested prior to the hearing before the Board. When the Company on the day following the discharges, wrote to the United States Inspector at Philadelphia advising him of the dismissals it limited its reason to the fact that during the strike at Houston the men "refused to obey anyone connected with the ship's or Company's officials."

We accordingly come to the consideration of the principal contentions of the Company, namely, that it had the right to discharge the seamen because the strike in which they had participated was an unlawful one and because they had violated the law of the sea and breached their shipping articles by participating in it. It is contended by the Company that the strike was an unlawful "sit-down" strike and the discharge of the strikers was therefore justified under the rule laid down in National Labor Relations Board v. Fansteel Metallurgical Corp., 306 U. S. 240. With this contention we cannot agree. The strikers were guilty of no violence or other unlawful conduct. They did not take or hold possession of the ship, as the captain and chief engineer both admitted at the hearing. They merely withheld their services during the eleven hours of the strike, without interfering in any way with the work of the officers and non-striking members of the crew. Sitting on the poop deck, the usual place for members of the crew to meet when off duty, did not make them trespassers, for the ship was their home and they were at no time ordered to leave it. We con- [fol. 779] clude that the strike was not so unlawfully conducted as to deprive the participants of the protection of the Act under the doctrine of the Fansteel case.

Did the breach of their agreement in the shipping articles to obey the commands of the master deprive the strik-

ing seamen of the protection of the Act and justify their subsequent discharge? We agree with the Board that it did not. In so holding we confine our consideration to the facts of this case. If the strikers had been guilty of criminal acts of violence or of forcible detainer of the vessel the doctrine of the Fansteel case would doubtless have justified their discharge by the Company. If their refusal to obey the directions of their officers had taken place while their ship was at sea or at anchor in an unsafe port subject to the perils of the sea so that obedience was essential to the safety of the vessel their action might well have transcended *the legitimate bounds of action* in a labor dispute and have constituted a revolt or mutiny. Rees v. United States, 95 F. 2d 784.

In the present case, however, during the whole period of the strike the ship was safely moored to the dock in the harbor of Houston, a domestic port. The strikers were guilty of no unlawful conduct. While they withheld their services, sufficient steam was maintained for the operation of all of the ship's sanitary and safety appliances. The chief engineer admitted at the hearing that the ship was not in danger at any time. The question whether under such circumstances American seamen may strike without becoming guilty of a revolt or mutiny has received no recent adjudication.[1] Such modern authority as there is upon the right of seamen to strike is negative. So we find that [fol. 780] Section 2 of the National Labor Relations Act does not exempt employers of seamen from its procisions, whereas it does expressly exempt carriers subject to the Railway Labor Act, (29 U. S. C. A. § 152). Also in two recent decisions by the Circuit Court of Appeals for the

[1] Justice Story, sitting at circuit, ruled on a number of occasions that the refusal by seamen to put to sea amounted to endeavoring to make a revolt. United States v. Hamilton (1818), Fed. Cas. No. 15,291 (the vessel was in Salem harbor and the crew objected to the substituted master); United States v. Gardner (1825), Fed. Cas. No. 15,188 (the vessel was in Boston harbor and the crew demanded that they should have a day watch below in the forenoon during the whole voyage); United States v. Cassedy (1837), Fed. Cas. No. 14,745 (the vessel was in St. Helena and the crew objected to the substitution of the mate for the captain as master).

Second Circuit (Weisthoff v. American-Hawaiian S. S. Co., 79 F. 2d 124, and Black Diamond S. S. Corp. v. National Labor Relations Board, 94 F. 2d 875) the right of seamen to strike may be inferred.

In the Weisthoff case members of a ship's crew were allowed to recover wages earned although they had left the steamship before the termination of the voyage. They had shipped at San Francisco for a trip to Gulf and Atlantic ports and return. When in New York harbor the crew made demands upon the master, refused to work until their demands were satisfied and refused to leave the ship until police were called aboard. They then left. The court found that certain of their demands were justified and that the making of the other demands did not amount to a revolt or desertion. In the Black Diamond S. S. Corporation case the court affirmed the Board's order directing the reinstatement of seamen who went out on strike while their vessel was in port.

On the other hand in Rees v. United States, supra, seamen who participated in a strike while their vessel, the SS. Algic, was in the harbor of Montevideo, Uruguay, were found guilty of endeavoring to make a revolt in violation of sec. 292 of the Criminal Code, (18 U. S. C. A. §483). The defendants there contended that "the crew of a vessel which is moored to a dock or is at anchor in a safe harbor have the right to strike" but the court said that that question was not before it for decision because the "Algic was not in fact moored to the dock or at anchor in a safe harbor, but was in such a position that the obedience of the crew to the orders of the master was essential to her safety. In such a case, the same rule is applicable as though the vessel were at sea, as this court decided in Hamilton v. United [fol. 781] States, 4 Cir. 268 F. 15." In Peninsular & Occidental S. S. Co. v. National Labor Relations Board, 98 F. 2d 411, seamen engaged in a sit-down strike. They took possession of the ship, refused to let the electrical equipment furnishing light or the pumps supplying the sanitary arrangements of the ship to be used and refused to permit any food to be served to anyone but themselves. The ship was prevented from sailing and the passengers had to be sent ashore and housed at the expense of the Company. The discharge of the strikers at the end of the voyage was held not to be an unfair labor practice.

It is, therefore, clear that upon authority the question of the right of seamen to strike under the circumstances of the case before us is still an open one. Upon reason, however, we think that there is no sound basis for depriving seamen of this right when, as here, their vessel is moored to the dock in a safe domestic port. Whether the right exists in a foreign port we need not now decide. There is undoubtedly a general rule of the maritime law which exacts from seamen implicit obedience to the commands of the master. The absolute power thus conferred upon the master is necessary at sea for the protection of the lives and property entrusted to his care. When his vessel is safely in port the necessity for such high power is largely gone. The Blake, 1 W. Rob. 73, 166 Eng. Rep. 500; Buddington v. Smith, 13 Conn. 334, 33 Am. D. 407; The South Portland, 111 F. 767.

In The Blake, supra, the English High Court of Admiralty held that the refusal by members of the crew, while the vessel was docked, to put to sea was not mutiny. Dr. Lushington, speaking for the court, said, (p. 506):

"It is also to be observed, that the occurrence took place in port, where the ship was exposed to no hazard; and I draw a strong line of distinction between disobedience of orders in port, and any insubordination whatever when the vessel is on the high seas, where it might expose to destruction the ship, cargo, and the lives of all on board." [fol. 782] In The South Portland, supra, it was held by the District Court for the District of Washington that it was unlawful for a master to cause the imprisonment of a member of his crew in a foreign jail, because of his refusal, when the vessel was in port, to proceed on a voyage. It must be concluded, we think, that when a vessel is safely moored in a domestic port the maritime law does not require the denial to seamen of the right to strike which is now freely accorded their fellows who labor on the land. We note that students of the subject have reached the same conclusion.[2]

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[2] Rothschild—The Legal Implications of a Strike by Seamen—45 Yale L. J. 1181, 1199 "None of the penalties imposed by law upon seamen for mutinous conduct or infractions of discipline were intended to apply to a peaceful strike in a port of safety. The law was intended to confirm the master's supreme authority on the high seas when

[fol. 783] The shipping articles, while containing a covenant "to be obedient to the lawful commands of the master * * * and of their superior officers, in everything relating to the vessel," did not contain an explicit agreement not to strike. The covenant to be obedient to the direction of one's superiors is implicit in every normal employment

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the master, single-handed, must enforce his orders, disobedience to which may lead to his overthrow and imperil the safety of ship, passengers and cargo. No such dangers are threatened while the ship is moored to the dock in a port of safety. At most, the shipowner suffers a pecuniary loss through the delayed sailing of the vessel—a loss which is a lawful incident to all strikes, which uniformly depend for their effectiveness upon the interruption of production.

Through the statute abolishing imprisonment as a penalty for desertion, which was enacted subsequent to the mutiny statute, seamen leaving a ship cannot be subjected to imprisonment in order to compel them to remain at work. Surely the mere fact that seamen, in the course of a strike, remain on board instead of leaving a ship moored in a port of safety cannot in itself make the difference between guilt or innocence of the crime of mutiny.

Most of the cases discussing the rights of seamen are antiquated by economic developments. But is is implicit even in these cases, decided at a time when the right to organize was denied and a strike by any class of workers was illegal, and when seamen quitting their ship could be imprisoned, that the unseaworthiness of a vessel was a grievance of which the crew might justifiably complain and which, if occasion required, they might properly combine to remedy.

For it is the crew, not the owner of a vessel or even its passengers, which is primarily concerned with the seaworthiness of a vessel and which is in the best position to know whether there has been compliance with the regulations designed to promote safety at sea. But since action by individual members of the crew is ineffectual, collective action is necessary. To deny the right of seamen to take collective action is to destroy a safeguard necessary to supplement even the most vigilant administrative enforcement of the law.

But safety at sea requires more than enforcement of safety regulations. It depends also upon a personnel made

contract. The articles merely made explicit that implicit obligation. The breach of that obligation by the exercise of the right to strike was not ground for terminating the contract of employment. Section 2(3) of the National Labor Relations Act (29 U. S. C. A. §152(3)) makes this quite clear. Consequently the shipping articles did not bar the seamen's right to strike while their vessel was safely moored in an American port and the breach of the articles involved in the strike did not justify the subse-

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efficient not by "discipline" but by decent working conditions. Such conditions are most effectively secured through the bargaining power of the seamen themselves rather than through legislative or administrative action. It should be self-evident that the right of seamen to organize and to strike where the ship is not thereby imperilled is essential to enforce compliance with statutory regulations and to secure decent working conditions, without which there can be no safety at sea.

The law now acknowledges, and even favors the right to strike as essential to a satisfactory adjustment of industrial conflicts within the framework of a democratic society. Special circumstances of danger may deny seamen that privilege when at sea or in a port of refuge. But there can be no reason of policy, and no support in the doctrines of maritime law, for denial to seamen when in a port of safety of a right freely recognized in other classes of workers."

Sapiro and Frank—Mutiny at the Dock, 25 Cal. L. Rev. 41, 51. "The decisions of a by-gone day would hold that a refusal to obey lawful commands while the ship is docked is an endeavor to make or the making of a revolt. But recognition of the labor union and the right of labor to bargain collectively and to dramatize its demands by means of the strike is now an integral part of the social-industrial world and of the law that reflects the important changes in that world.

The doctrines of Justice Story must be changed to make room for the expansions of understanding and social rights. When the crew of a ship, safely moored to a dock, strikes and refuses to work, in the effort to gain certain legitimate ends, for themselves and for others of their class, such action is no longer mutinous but is only a lawful incident in the exercise of the right of collective bargaining."

quent discharge of the strikers. It follows that the Board was not in error in directing the reinstatement of the five discharged seamen and of the others who went out on strike on July 25th because of the discriminatory discharge of their fellow seamen.

One further point must be noticed. The Board ordered the Company to reimburse public work relief agencies for sums paid to the five seamen ordered reinstated by them. This was beyond its power. Republic Steel Corp. v. National Labor Relations Board, 311 U. S. 7. The Board's [fol. 784] order will accordingly be modified by eliminating this provision.

The order of the National Labor Relations Board is modified as hereinabove indicated and as so modified is affirmed. A decree enforcing it as modified will be entered.

CLARK, Circuit Judge, Dissenting:

In my humble judgment the National Labor Relations Board has here been guilty of a second disservice to wise industrial relations. I say second because the United States Supreme Court has already expressed its disagreement with their earlier approval of the so-called "sit-down strike".[1] I cannot, therefore, join my learned brethren in assenting to what I deem to be another mistake. The Fansteel case declared a limitation on the National Labor Relations Act. The theory of that limitation has been much discussed. As is often the case in matters of statutory interpretation, there has not been unanimity either as to its basis or its scope.[2] It is clear, however, that the inferior Federal

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[1] N. L. R. B. v. Fansteel Metallurgical Corp., 306 U. S. 240.

[2] Labor Law—Legal Status of Sit-down Strike—Legal and Equitable Remedies, 35 Michigan Law Review 1330 (comment); The Fansteel Decision: Protection of Striking Workers Under the Wagner Act, 33 Illinois Law Review 187 (comment); Labor Law—National Labor Relations Board—Effect of Employees' Misconduct on Right to Reinstatement, 38 Columbia Law Review 1507, 1508 (note); Hart and Pritchard, The Fansteel Case: Employee Misconduct and the Remedial Powers of the National Labor Relations Board, 52 Harvard Law Review 1275; Labor Law—Na-

Courts have been directed to except from the reinstatement requirements of the Act certain types of misbehaving employees. In the Republic case this Court had occasion to attempt some classification of those types.[3] The attempt was successful insofar as success is implied in denial of certiorari.[4]

[fol. 785] In the case at bar we are required to pass upon employee conduct in a special environment. That environment is the sea and the conduct is that of those who go down thereto in ships. The behavior of the seamen ordered reinstated by the Board consisted of a collective cessation from work on a ship moored to a dock in a foreign[5] port. On land such a cessation from work comes within the right to strike. That right has happily been an accepted part of our jurisprudence for many years.[6] That does not and plainly cannot mean the right is absolute.[7] Mr. Justice

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tional Labor Relations Act—Employee Misconduct as Barring Relief, 37 Michigan Law Review 1256 (comment); Employee Misconduct Under the Wagner Act: Developments Since the Fansteel Case, 39 Columbia Law Review 1369 (note); cf. Weisiger, Reinstatement of Sit-down Strikers, 23 Minnesota Law Review 30.

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[3] Republic Steel Corp. v. N. L. R. B., 107 F. (2d) 472.

[4] Republic Steel Corp. v. N. L. R. B., 309 U. S. 684.

[5] As contrasted with home—the port being Houston, Texas.

[6] Wright, Criminal Conspiracies and Agreements § 12, p. 35; Martin, The Modern Law of Labor Unions § 30 General Right of Workmen to Strike; Oakes, Organized Labor and Industrial Conflicts § 312 The Right to Strike—in General; Storey, The Right to Strike, 32 Yale Law Journal 99; Mason, The Right to Strike, 77 University of Pennsylvania Law Review 52; Labor Union—Right to Strike— Unlawful Interference, 9 Boston University Law Review 280 (comment); Nelles, The First American Labor Case, 41 Yale Law Journal 165.

[7] What right is?, one might reflect. In discussing that very precious right, that of free expression, I quoted Mr. Lippman:

"There are, so far as I can discover no absolutists of liberty; I can recall no doctrine of liberty which under the

Brandeis pointed that out some years ago saying:

"The right to carry on business—be it called liberty or property—has value. To interfere with this right without just cause is unlawful. The fact that the injury was inflicted by a strike is sometimes a justification. But a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. * * * Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike. Compare Aikens v. Wisconsin, 195 U. S. 194, 204-5."

Dorchy v. Kansas, 272 U. S. 306, 311.

Our purpose here does not require any catalogue of exceptions. Courts and individual judges are not always in [fol. 786] accord.[8] They search for an adjustment of the conflicting interests of both parties to the economic conflict in relation to their background as members of a community. By the same token, the test is not one of convenience. The weapon of the strike depends upon inconvenience to the employer and sometimes even to innocent third parties for its efficacy.[9] Its sanction in that aspect is one of the penalties of the warfare conception of labor relations. So the timing can be selected in terms of strategy rather than in terms of effective production.

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acid test does not become contingent upon some other ideal. * * * For what every theorist of liberty has meant is that certain types of behaviour and classes of opinion better regulated should be somewhat differently regulated in the future."

124 Atlantic Monthly 616, quoted in Committee for Industrial Organization v. Hague, 25 F. Supp. 127, 131.

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[8] Oakes, Organized Labor and Industrial Conflicts, §313 Where Striking Involves Breach of Contract, § 314 Other Limitations on Right to Strike; Lowry, Strikes and the Law, 21 Columbia Law Review 783; Sayre, Labor and the Courts, 39 Yale Law Journal 682; Eskin, The Legality of "Peaceful Coercion" in Labor Disputes, 85 University of Pennsylvania Law Review 456.

[9] Frankfurter and Greene, The Labor Injunction, Chapter 1, The Allowable Area of Economic Conflict.

One limitation of time has been recognized both by the cases and by statute.[10] That time is the time of another war, the war between nations rather than strife over what is a just proportionate share of the profits of production. It is dangerous for a country engaged in its own defense to accord to workers the right to impose upon its need to avoid the fatal "too late and too little". So it is dangerous for a community to accede to a timing which goes beyond inconvenience into peril. This is the philosophy expressed by that great Massachusetts lawyer and defender of the oppressed, Moorfield Storey, in his well-known article, The Right to Strike, above cited. Mr. Storey says:

"* * * Therefore the right of the individual to leave his work must be subject to the *paramount right* of the public. The engineer who is running a train from one great centre to another can no more stop in the middle of his journey in some desolate place and tell his passengers he will not go on unless they pay him a considerable sum of money [fol. 787] than a sailor aboard ship can mutiny to obtain some advantage to himself at the expense of the voyage. The principle admits no distinction. The people through their legislatures can and should insist that labor disputes shall be decided by judicial tribunals and not by civil war, and that we shall not all live subject to the danger of such war whenever labor leaders choose to bring it on."

Storey, The Right to Strike, 32 Yale Law Journal 99, 105 (italics mine).

It is the philosophy also of the Wicks Bill[11] forbidding the abandonment of public conveyances, passed recently by the New York Legislature. Upon his approval thereof, another great counselor of the downtrodden, Governor Lehman of New York, stated that "no one with any common sense would interpret this Act as a denial of the right to strike". As a matter of fact I had always thought that was the philosophy of the labor movement itself. Certainly one

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[10] Right to Strike in War Time, 32 Harvard Law Review 837 (note); Injunction: Coal Strike Enjoined as Violation of the Lever Act, 5 Cornell Law Quarterly 184 (note); cf. Chafee, The Progress of the Law, 1919-1920, 34 Harvard Law Review 388, 400 et seq.

[11] P. L. (N. Y.).

remembers the return of engines to the roundhouse and the careful manning of pumps in the mines.

Should that philosophy be adjudged part of the National Labor Relations Act and so those who disregard it be excepted from the Act's benefits? I think it should. And to so decide does not, in my belief, require me to differ with my brethren as to the present incidence of the crime of mutiny. Undoubtedly their view that Captain Bligh has been dead a long time finds current acceptance. I am pleased to note they cite some of the legal periodicals which are this writer's favorite pabulum. Let me add four more to their two.[12] I do not think the test is mutiny vel non. Such a holding leans too heavily on the felony-misdemeanor distinction of the land cases.[13]

[fol. 788] It is true that only inconvenience and not danger may result from a particular cessation at the dock in a foreign port. To bottom a general whitewash upon that fact overlooks, in my opinion, the very essence of maritime traffic. Such essence, here, as in the air, is the "happy land", the safe return of the vessel from its voyage. It may be that during the course of its journey a ship is in positions where its security is unaffected by the idleness of its crew. Some qualms are detectable by the narrowness of the majority's ruling.[14] The difficulty seems to me more fundamental. The Board and this Court entrust the estimation of that security to the persons most likely to be biased. Shipwrecked passengers will take little satisfaction in the sailors' equivalent of the common and tragic, "didn't know it was loaded". Labor unions have been solicitous in their advocacy of full crew laws. Maritime unions argue for the extension of maintenance and care of

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[12] Sit-down Strike on Shipboard, 23 Cornell Law Quarterly 302, 305, 306 (note); Seamen—Mutiny—Sit-down Strikes, 18 Oregon Law Review 128, 134 (note); S. S. Algic, 1 National Lawyers Guild Quarterly 144, 148; Labor Law—Right of Seamen to Strike, 37 Columbia Law Review 1294 (note).

[13] Employee Misconduct Under the Wagner Act: Developments Since the Fansteel Case, 39 Columbia Law Review 1369 (note).

[14] Would it be the same, for instance, if one instead of two hawsers were used?

seamen beyond the voyage. Is it not inconsistent to break the care of passengers during the voyage and to suggest no crews at all? One of the authors above cited puts this argument in slightly different fashion. He says:

"To advocate strikes on board a ship at its pier merely on the basis that, in such circumstances, the safety of lives and cargo is not endangered, is to take a short-sighted point of view. No doubt, while a vessel is in port, the immediate security of all concerned is not greatly jeopardized by the crew's refusal to do its duty. But it is not alone the immediate safety or the present securities which must be considered. There is an ultimate safety which must be protected. For this there must be discipline at all times, whether the ship be at sea or tied to shore in the safest of harbors. A master who cannot control his crew in port is not likely to be able to control it at sea. To allow the [fol. 789] seamen to resist lawful commands in one place is but to encourage similar resistance elsewhere."

Sit-down Strikes on Shipboard, 23 Cornell Law Quarterly 302, 306-307 (note).

To stop work on land just after a large order is received or to refuse to sail a ship which is away from her home port undoubtedly gives additional economic leverage. Inconvenience to consumers is one thing, danger to passengers is quite another. If the National Labor Relations Act may be used, as the Supreme Court has held, to deter employee misbehavior, the writer of this dissent can think of no better example or more useful occasion.

A true Copy: Teste:

—— ——, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 790] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1940

No. 7435

SOUTHERN STEAMSHIP COMPANY, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review and Set Aside and on Request for Enforcement of an Order of the National Labor Relations Board

DECREE ENFORCING ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before Biggs, Maris, Clark, Jones, and Goodrich, Circuit Judges

The National Labor Relations Board having issued an order against Southern Steamship Company on April 22, 1940, Southern Steamship Company having petitioned this Court to review and the National Labor Relations Board having requested enforcement of said Order, and this Court having duly considered the same, and having on May 6, 1941 filed its opinion approving said Order, as modified,

It is Hereby Ordered, Adjudged and Decreed that petitioner, Southern Steamship Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, affiliated with the C. I. O., or any other labor organization of its employees by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any terms or conditions of their employment;

[fol. 791] (b) Refusing to bargain collectively with the National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief

electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by the petitioner;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the National Maritime Union of America, affiliated with the C. I. O., as the exclusive representative of the unlicensed personnel employed in the deck, engine, and stewards' departments, except wireless and radio operators, chief electricians on electrically driven ships, and junior engineers who hold licenses, on vessels operated out of Atlantic and Gulf ports by the petitioner, in respect to rates of pay wages, hours of employment, and other conditions of employment;

(b) Offer to Joseph G. Warren, John Pfuhl, Jr., Elmer J. Ferguson, Edward W. Smith, and John J. Tracey immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges previously enjoyed by them;

(c) Make whole Joseph G. Warren, Elmer J. Ferguson, Edward W. Smith, and John J. Tracey for any loss of pay [fol. 792] they may have suffered by reason of the petitioner's discrimination in regard to their hire and tenure of employment, by payment to each of them of a sum of money equal to that which he would normally have earned as wages, including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day, from July 25, 1938, to the date on which the petitioner offers him reinstatement (and adding thereto in the case of Elmer J. Ferguson the bonus of $25 due him on the date of his discharge), less his net earnings during said period; provided, however, that the petitioner shall deduct from the amount thus due him, monies received by him during said period

for work performed upon Federal, State, county, municipal, or other work-relief projects;

(d) Make whole John Pfuhl, Jr., for any loss of pay he may have suffered by reason of the petitioner's discrimination in regard to his hire and tenure of employment, by payment to him of a sum of money equal to that which he would normally have earned as wages, including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day, from July 25, 1938, to February 25, 1939, and from April 22, 1940, to the date of offer of reinstatement, less his net earning during said period; provided, however, that the petitioner shall deduct from the amount thus due him monies received by him during such period for work performed upon Federal, State, county, municipal, or other work-relief projects;

(e) Upon application, and upon the first available sailing date after such application, offer to William Reeves, Henry A. Lathan, William Godfrey Burns, Edward B. Hughes, Gordon Neeley, and Charles C. Holt, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed by them, dismissing, if necessary, those who have been hired to replace them;

(f) Make whole William Reeves, Henry A. Lathan, William Godfrey Burns, Edward B. Hughes, Gordon Neeley, [fol. 793] and Charles C. Holt, for any loss of pay they may suffer by reason of any refusal of their applications for reinstatement, by payment to each of them a sum of money equal to that which he would normally have earned as wages, including therein the value of maintenance on shipboard calculated at the rate of $2.35 per day, from the date of any such refusal of his application to the date of offer of reinstatement, less his net earnings during said period; provided, however, that the petitioner shall deduct from the amount thus due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects;

(g) Post immediately notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of the posting, stating: (1)

that the petitioner will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b) and (c) of this Order; (2) that the petitioner will take the affirmative action required by paragraphs 2 (a), (b), (c), (d), (e), and (f) of this Order; and (3) that the petitioner's employees are free to become or remain members of the National Maritime Union of America, affiliated with the C. I. O. and that it will not discriminate against any employee because of membership or activity in that organization;

(h) Notify the Regional Director for the Fourth Region of the National Labor Relations Board in writing within ten (10) days from the date of this Order what steps the petitioner has taken to comply herewith.

By the Court, Albert B. Maris, Circuit Judge.

Dated: May 20, 1941.

Endorsements: Decree of Enforcement. Received & Filed May 20, 1941. Wm. P. Rowland, Clerk.

[fol. 794] In the United States Circuit Court of Appeals for the Third Circuit, October Term, 1940

No. 7435

Southern Steamship Company, Petitioner,

vs.

National Labor Relations Board, Respondent

Order Granting Stay of Proceedings

Coram Biggs, Maris, Clark, Jones and Goodrich

And Now, to wit, this 23 day of May, A. D. 1941, upon motion of Joseph W. Henderson, Esquire, attorney for petitioner,

It is Ordered that all proceedings for the enforcement of the Decree entered by this Court in the above-entitled matter on May 20th, 1941, in conformity with the opinion of this Court rendered on May 6, 1941, be and the same are stayed until August 1st, 1941, and if on or before August 1st, 1941, petitioner shall file in the Supreme Court of the

United States a petition for writ of certiorari, said stay shall continue in full force and effect until said Supreme Court shall dispose of this case upon such petition thereto for a writ of certiorari.

By the Court: John Biggs, Jr.

Endorsements—Order Staying Proceedings for Enforcement of Decree. Received & Filed May 23, 1941. Wm. P. Rowland, Clerk.

[fol. 795] UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, Set.:

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, Do Hereby Certify the foregoing to be a true and faithful copy of the original Appendix to Petitioner's Brief, as constituting the portions of the record before this Court at argument; and proceedings in this Court in the case of Southern Steamship Company, petitioner, vs. National Labor Relations Board, respondent, No. 7435, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 18th day of June in the year of our Lord one thousand nine hundred and forty-one, and of the Independence of the United States the one hundred and sixty-fifth.

Wm. P. Rowland, Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal.)

[fol. 796] IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1941

No. —

SOUTHERN STEAMSHIP COMPANY, Petitioner,
v.
NATIONAL LABOR RELATIONS BOARD, Respondent,
and
NATIONAL MARITIME UNION OF AMERICA, Intervening Respondent

STIPULATION AS TO RECORD

Subject to this Court's Approval, It is Hereby Stipulated and Agreed by and between the attorneys for the respective

parties hereto, that for the purpose of the petition for a writ of certiorari, the printed record may consist of the following:

1. The printed appendix to petitioner's brief as filed in the United States Circuit Court of Appeals for the Third Circuit;

2. The proceedings had before the United States Circuit Court of Appeals for the Third Circuit.

It is Further Stipulated and Agreed that petitioner will cause the Clerk of the United States Circuit Court of Appeals for the Third Circuit to file with the Clerk of the Supreme Court of the United States the transcript of record certified and filed by the Board in said Circuit Court of Appeals; and that, in the event the petition for the writ of [fol. 797] certiorari be granted, the printed record shall consist of the proceedings in the Court below, and such portions of the entire transcript of record as certified by the Board to the court below as the respective parties may designate.

Dated at Philadelphia, Pa., this 16 day of July, 1941.

Joseph W. Henderson, Attorney for Southern Steamship Company.

Dated at Washington, D. C., this 18 day of July, 1941.

Charles Fahy, Acting Solicitor General of the United States.

Dated at New York, N. Y. this — day of July, 1941.

William L. Standard, Attorney for National Maritime Union of America.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI--Filed October 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

JUL 30
CHARLES

IN THE

Supreme Court of the United States

October Term, 1941.

No. 320.

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

and

NATIONAL MARITIME UNION OF AMERICA,
Intervening Respondent.

Petition for Writ of Certiorari and Brief in Support Thereof.

JOSEPH W. HENDERSON,
RANDOLPH W. CHILDS,
Attorneys for Petitioner.

International, 236 Chestnut St., Philadelphia

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IN THE

Supreme Court of the United States.

No. . October Term, 1941.

SOUTHERN STEAMSHIP COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

AND

NATIONAL MARITIME UNION OF AMERICA,

Intervening Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Southern Steamship Company, prays that a writ of certiorari be issued to review a final decree of the United States Circuit Court of Appeals for the Third Circuit entered on May 20, 1941 (R. 786), granting the petition of the respondent, National Labor Relations Board (hereinafter called "Board") for the enforcement of its order, dated April 22, 1940, against petitioner, Southern Steamship Company, and dismissing petitioner's petition to review and set aside the Board's aforesaid order.

SUMMARY AND STATEMENT OF MATTER INVOLVED.

The National Labor Relations Board instituted proceedings under the National Labor Relations Act against the petitioner, Southern Steamship Company, charging that petitioner had unlawfully terminated the employment of five members of the crew of the *SS. City of Fort Worth* and that petitioner had refused to bargain with the National Maritime Union of America [1] (hereinafter called "N. M. U.") after its certification by the Board. After hearing, the Board ordered Southern Steamship Company to reinstate with back pay the said five members of the crew and also six other members of the crew who had gone on a "sympathy" strike as a result of said termination and further ordered the petitioner to bargain collectively with the N. M. U. This order was affirmed by the United States Circuit Court of Appeals for the Third Circuit, and a decree enforcing the order was entered by said Court (R. 769, 786).

The petitioner has maintained and still maintains that:

(a) The seamen involved in this proceeding did not have the right to engage in a strike on board the *SS. City of Fort Worth* when she was moored to the dock at Houston, Texas, during her coastwise voyage from Philadelphia because they were seamen and also because they were under shipping articles; hence the failure to rehire the seamen engaged in said strike did not amount to an unfair labor practice within the meaning of the National Labor Relations Act.

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[1] The National Maritime Union of America was permitted to intervene as a party to the proceedings in the United States Circuit Court of Appeals by order entered September 16, 1940. (R. 767.)

(b) Irrespective of the strike by said seamen, their tenure of employment terminated when they "signed off" at the expiration of their Shipping Articles, and petitioner was not required to reëmploy them.

(c) The certification of N. M. U. was invalid because representatives of the petitioner had not been permitted to be present at the election and petitioner was justified in refusing to bargain with said organization.

The controversy in this proceeding concerns voyage No. 201 of the *SS. City of Fort Worth* from Philadelphia, its home port, to Houston and return. On June 30, 1938, the crew signed Shipping Articles at Philadelphia, the home port, before the local United States Shipping Commissioner, wherein, *inter alia*, they agreed "to conduct themselves in an orderly, faithful, honest and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of said Master . . . and of their superior officers, in everything relating to the vessel . . . ." (R. 681.)

The vessel sailed on July 1, 1938 with said crew. In the course of its voyage while the *SS. City of Forth Worth* was docked at Houston, not its home port, thirteen members of the crew held a meeting on shore on Sunday, July 17, 1938. They claimed they had previously requested a bargaining conference and also passes for the union delegates to board the ships while in port and having been informed that nothing had been accomplished concerning a bargaining conference or the securing of passes, they decided to strike for union recognition (R. 23, 129).

On the next day, Monday, July 18, 1938, the strike was started at 8 o'clock a. m. Tracey, an oiler, failed to turn

the steam on deck and refused to obey the command of Paul,[2] the First Assistant Engineer, to do so. When Paul then stated he would put the steam on deck himself, Tracey stated that he would "take the firemen out of the fire room" (R. 23, 132). Paul then turned the steam on, and Tracey called Braun, a fireman, to put the "fires out". Braun thereupon "threw his pumps and came out." (R. 23, 133.) When Robinson, the Second Engineer, told Tracey that he would put the steam on deck himself, Tracey said that there would be no steam after eight o'clock (R. 355).

Ferguson, a fireman who relieved Braun at eight o'clock, refused to tend the fires, and joined the other strikers who were seated on the poop deck.

At 10:30 o'clock that morning, Captain Rudan (who had just returned from Galveston) ordered the thirteen striking members of the crew collectively and individually to "turn to", and they individually and collectively refused to do so (R. 24, 435), Warren, the spokesman for the strikers, telling the master that they were striking for union recognition and passes (R. 24).

After Captain Rudan had waited an hour to see if the strikers would obey his commands and return to work (R. 436) the strikers still refused to perform their duties (R. 437). The master then went ashore and brought aboard the local Deputy United States Shipping Commissioner, from Houston, who read the Shipping Articles to the crew and explained to them what their obligations were, namely, *inter alia*, "to be obedient to the lawful commands of the Master . . . and of their superior officers . . . ."

Notwithstanding the orders of their superior officers

[2] Misnamed "Pool" in various instances in the Record. See R. 23, 367.

and the warnings of the United States Shipping Commissioner, the thirteen striking seamen continued their strike and occupied the poop deck of the vessel during the rest of the day. The strike was terminated at about seven o'clock that evening after the petitioner's local attorney had promised to recommend to the petitioner that it issue passes to representatives of the N. M. U.[3] (R. 24, 25.)

The voyage was completed when the vessel arrived at Philadelphia, and on July 25, 1938 the employment of all of the ship's crew, including the thirteen strikers, was terminated by their "signing off" before the local United States Shipping Commissioner. (R. 685.)

After "signing off", Warren, Phufl, Tracey, Ferguson, and Smith (five of the strikers) were informed by their superior officers that they would not be reshipped by the petitioner.[4]

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[3] The executive offices of the petitioner are located at Philadelphia. It is undisputed that no one at Houston had authority to make any agreement on behalf of petitioner permitting union delegates to board vessels, or recognizing any collective bargaining representative or waiving any misconduct of the crew in connection with the sit-down strike and their disobedience to orders of the vessel's officers.

[4] Petitioner has contended throughout these proceedings that the evidence adduced was insufficient to establish any custom or practice on the part of petitioner to vary the terms of the Shipping Articles and to hold that seamen when shipped by petitioner have a continuous tenure of employment as found under the evidence in *National Labor Relations Board v. Waterman Steamship Co.*, 309 U. S. 206 (1940). Moreover, other pertinent and relevant facts (in addition to the failure to establish a custom contradicting terms of the Shipping Articles) distinguish and differentiate this case from the *Waterman case.* See discussion infra on pages 19 and 20 of Brief.

When the other members of the crew learned that these five men would not be reshipped, seven more seamen [5] voluntarily left the ship and failed to "sign on" for another voyage.

JURISDICTION.

The final decree of the United States Circuit Court of Appeals for the Third Circuit was entered May 20, 1941 (R. 786).

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, § 1, 43 Stat. 938 (28 U. S. C. A. Section 347 (a)) and Section 10 (e) and (f) of the National Labor Relations Act, July 5, 1935, c. 372, § 10, 49 Stat. 453 (29 U. S. C. A. Section 160 (e) and (f)).

OPINIONS BELOW.

The findings of fact, conclusions of law and order of the National Labor Relations Board, filed on April 22, 1940, (R. 17-44) are reported in 23 N. L. R. B. No. 2.

The opinion of the United States Circuit Court of Appeals for the Third Circuit, written by Circuit Judge Maris, and concurred in by Circuit Judges Biggs, Jones and Goodrich (R. 769) with a dissent written by Circuit Judge Clark (R. 780) was filed on May 6, 1941, and is reported in *Southern Steamship Company v. National Labor Relations Board,* 120 F. (2d) 505.

---

[5] Crassavaz, the boatswain; Reeves, an able-bodied seaman; Lathan and Burns, ordinary seamen; Hughes, an oiler; and Neeley and Holt, wipers. Later, Crassavaz voluntarily returned for employment and was "signed on" for a subsequent voyage.

QUESTIONS INVOLVED.

1. Do seamen who have signed and are serving on ship-board under United States Shipping Articles have the right to violate those articles by engaging in a strike on board the steamship moored to a dock in a foreign port?[6]

2. Where a seaman has signed United States Shipping Articles for a particular coastwise voyage and "signs off" at the end of said voyage, is his employment then terminated?

3. Did the National Labor Relations Board err in ruling that, "in the absence of consent of the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives"?

REASONS FOR GRANTING PETITION.

The petition should be granted because the United States Circuit Court of Appeals for the Third Circuit has decided an important question of federal law—namely, the right of seamen under Shipping Articles to engage in a strike on board a vessel moored to a dock in a foreign[6] port—which question has not been,[7] but should be, settled by your Honorable Court.

Further, the decision of this federal question is in conflict with decisions of the Circuit Courts of Appeals for

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[6] As contrasted with home port. See the dissenting opinion of Circuit Judge Clark (R. 781).

[7] See the majority opinion by Circuit Judge Maris, in which he states: "It is, therefore, clear that upon authority the question of the right of seamen to strike under the circumstances of the case before us is still an open one." (R. 777.)

the Fourth and Fifth Circuits and with two decisions of the District Court for the District of Maryland. *Peninsular & Occidental Steamship Co. v. National Labor Relations Board,* 98 F. (2d) 411 (C. C. A. 5th, 1938), cert. den. 305 U. S. 653 (1938); *Rees v. United States,* 95 F. (2d) 784 (C. C. A. 4th, 1938); *The Oakmar,* 20 F. Supp. 650 (D. C. Md. 1937); *The Losmar,* 20 F. Supp. 887 (D. C. Md. 1937).

The decision also is probably in conflict with applicable decisions of your Honorable Court (a) in sanctioning a "sit-down" strike by seamen on petitioner's vessel (Contra: *National Labor Relations Board v. Fansteel Metallurgical Corp.,* 306 U. S. 240 (1939)) and (b) in deciding that a seaman's tenure of employment does not terminate when he "signs off" Shipping Articles without proof by substantial evidence that the Shipping Articles had been modified by custom or agreement that the employment was to continue. (Cf. *National Labor Relations Board v. Waterman Steamship Co.,* 309 U. S. 206 (1940).)

The proper determination of this federal question is of great national importance, especially at this time when the security of the nation is so dependent not only upon its Navy but also upon the strike-free operation of its Merchant Marine. The law relating to the right to strike on land has no application to those who go down to the sea in ships.

SOUTHERN STEAMSHIP COMPANY

By JOSEPH W. HENDERSON,
Of Counsel.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA, } *ss.:*

JOSEPH W. HENDERSON, being duly sworn according to law, deposes and says that he is counsel for the petitioner herein and that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

JOSEPH W. HENDERSON.

Sworn to and subscribed before me this 29th day of July, A. D. 1941.

GEORGE M. BRODHEAD, JR.,
(Seal) *Notary Public.*
My Commission expires January 19, 1943.

I hereby certify that I have examined the foregoing Petition and that in my opinion it is well founded and entitled to the favorable consideration of the Court and that it is not filed for the purpose of delay.

JOSEPH W. HENDERSON,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. . October Term, 1941.

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

AND

NATIONAL MARITIME UNION OF AMERICA,
Intervening Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

For Opinions Below, Jurisdiction, Statement of the Case, and Questions Presented see pages 2 to 7 of the Petition.

I. Seamen Under Shipping Articles Do Not Have the Right to Engage in a Strike on Board a Vessel Moored to a Dock in a Foreign [1] Port.

The members of the crew of the petitioner's steamship, the *SS. City of Fort Worth*, on June 30, 1938, signed Shipping Articles before a local United States Shipping Com-

[1] As contrasted with home port. See the dissenting opinion of Circuit Judge Clark (R. 781).

missioner for a coastwise voyage from Philadelphia to Houston and other ports and return wherein they agreed, *inter alia*, to perform their duties and to obey the commands of their superior officers. (R. 681, 3.)

On Sunday, July 17, 1938, while ashore at Houston, not the home port, thirteen members of the crew decided to strike because the petitioner had not recognized the N. M. U. for purposes of collective bargaining and had refused passes on board its vessels for such representatives. (R. 23, 129.)

The following day, Monday, July 18, 1938, at about 8 a. m., the thirteen members of the crew, consisting of the boatswain, seamen, firemen, oilers, wipers, and the mess boy, staged a "sit-down" strike on board the vessel. This strike continued the entire day.

The men in the engine department refused to tend to fires and to turn steam on deck for the loading of cargo, while the men in the deck division refused to perform their duties. All of the strikers gathered together on the poop deck of the ship which place they occupied during the entire strike.

The Master ordered these seamen to perform their various duties (R. 24, 435) and the First Officer, the Chief Engineer and the Steward likewise ordered the seamen under them to "turn to" (R. 272, 273, 380, 381, 408). The United States Shipping Commissioner was brought aboard by the Master and he read to these strikers the Shipping Articles which they had signed and warned them of the consequences of their disobedience (R. 24, 437-440). Notwithstanding these orders and warnings, the strikers repeatedly refused to return to work but continued to occupy and possess the poop deck until seven o'clock that night when the strike was adjusted (R. 25, 137, 274).

The testimony shows that the strikers themselves considered the strike to be what is commonly known as a "sit-down" strike which was deliberately staged notwithstanding possible danger to the vessel while moored to the dock. Although no damage was occasioned, serious consequences might have resulted from these acts. The officers were required to assist the six men of the crew who did not strike in the care of the fires and the loading of the cargo during the entire day of Monday, July 18, 1941. The evidence showed that without fires it would have been impossible to have maintained the necessary steam pressure for loading and to have maintained adequate fire protection for the ship. (R. 354.) Notwithstanding these known dangers the strikers wilfully refused to perform their duties, took possession of the poop deck of the *SS. City of Fort Worth*, and were a law unto themselves for eleven hours.

Seamen have no right to strike. "The nature of their calling . . . imposes on them obligations not common to shore occupations." *Rees v. United States*, 95 F. (2d) 784, 792 (C. C. A. 4th 1938).

The unlawfulness of the strike in this case acquired a peculiar significance different from that of strikes on land not only because of the unique relationship between the seamen and their employer but also because of the fact that the strike occurred on board the vessel while she was moored to a dock in a foreign [2] port.

The Court below in its majority opinion realized that "the question of the right of seamen to strike under the circumstances" in this case "is still an open one" (R. 777)

---

[2] As distinguished from home port. See dissenting opinion of Circuit Judge Clark (R. 781).

but drew an artificial distinction between a strike in a foreign[3] port and a strike in a domestic port.[4]

Circuit Judge Clark recognized the fallacy of this reasoning when he said in his dissenting opinion:

> "To bottom a general whitewash upon that fact overlooks, in my opinion, the very essence of maritime traffic. Such essence, here, as in the air, is the 'happy landing', the safe return of the vessel from its voyage." (R. 784.)

The law makes no distinction in questions of mutiny between disobedience of sailors at sea and in port. *Rees v. United States, supra.* Nor is any distinction made between mutiny in a domestic port and in a foreign port since the mutiny statute is applicable to acts not only on the high seas but also on waters within the admiralty and maritime jurisdiction of the United States. Revised Statutes §§ 5359, 5360, 18 U. S. C. A. §§ 483, 484.

The Court-below apparently conceded that the strike would have been unlawful if the ship had been at sea and, by inference (although it refused to decide), if the ship were in the port of a foreign power but held that the strike was lawful in a port of the United States. These classifications represent distinctions without any basic differences. In each case the authority of the master is flaunted, and safety of the ship is jeopardized.

In analogous situations inferior federal courts have refused to sanction strikes on board vessels. *Peninsular & Occidental Steamship Co. v. National Labor Relations Board,* 98 F. (2d) 411 (C. C. A. 5th 1938) cert. den. 305 U.

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[3] A port outside the jurisdiction of the United States.

[4] "Upon reason, however, we think that there is no sound basis for depriving seamen of this right when, as here, their vessel is moored to the dock in a *safe domestic port.* Whether the right exists in a foreign port we need not now decide." (R. 777.) (Italics ours.)

S. 653 (1938) where the crew staged a "sit-down" strike at Miami and refused to permit the use of the electrical equipment; *Rees v. United States, supra,* where the crew, while at Montevideo, staged a sympathetic "sit-down" strike by refusing to use steam or to "turn to"; *The Oakmar,* 20 F. Supp. 650 (D. C. Md. 1937), where the crew took possession of the ship and compelled the owners to obtain possession through court proceedings; *The Losmar,* 20 F. Supp. 887 (D. C. Md. 1937), where the crew took possession of the ship and compelled the owners to obtain possession through court proceedings but voluntarily left the ship before the hearing.

The Court-below erred in holding that the right of seamen to strike on board a vessel *under circumstances present in this case* can be inferred from the two cases of *Weisthoff v. American-Hawaiian S. S. Co.,* 79 F. (2d) 124 (C. C. A. 2nd, 1935) cert. den. 296 U. S. 619 (1935) and *Black Diamond S. S. Corp. v. National Labor Relations Board,* 94 F. (2d) 875 (C. C. A. 2nd, 1938) cert. den. 304 U. S. 579 (1938).

The *Weisthoff case* did not concern a labor dispute nor was it a criminal proceeding. Sailors who refused to work or to leave the ship until compelled to do so sued for wages. The Court permitted recovery because the master had violated statutory regulations in causing watches to be broken and had required the seamen to work overtime. Since not every mutiny results in the forfeiture of wages, it is a *non sequitur* to say that the acts did not constitute mutiny merely because there was no forfeiture of wages in that case.

The *Black Diamond case* is even less applicable. In that case there was no strike *on board* the vessel but the engineers voluntarily left their ships prior to sailings.

A strong American merchant marine can never be developed and maintained if seamen may strike on board their vessels wherever they may be moored. The authority of the master must still be upheld by the Courts.

> "To advocate strikes on board a ship at its pier merely on the basis that, in such circumstances, the safety of lives and cargo is not endangered, is to take a short-sighted point of view. No doubt, while a vessel is in port, the immediate security of all concerned is not greatly jeopardized by the crew's refusal to do its duty. But it is not alone the immediate safety or the present security which must be considered. There is an ultimate safety which must be protected. For this there must be discipline at all times, whether the ship be at sea or tied to shore in the safest of harbors. A master who cannot control his crew in port is not likely to be able to control it at sea. To allow the seamen to resist lawful commands in one place is but to encourage similar resistance elsewhere."
>
> Sit-down Strikes on Shipboard, 23 Cornell Law Quarterly, 302, 306-307 (note).

From time immemorial the master of the ship has been supreme in command. There are sensible and sound reasons for that relationship which your Honorable Court knows without any further statement from the petitioner. The law which permits strikes on land cannot possibly be held applicable to those men who go down to the sea in ships. Seamen should not be allowed to strike under circumstances similar to the instant case. It would result in a complete breakdown and demoralization of the responsibility for life and property aboard the ship. Seamen from earliest days have known that the master is the final authority on board his vessel. If seamen who feel they are

aggrieved are permitted to flaunt the authority of their master by refusing to obey his lawful commands and then engaging in a strike, the law of the sea, so far as responsibility of the master and crew are concerned, would be revolutionized. The far-reaching effects of such a revolutionary change are so obvious that the petitioner will not take the time to point them out.

There must be a different law for strikes on ships and those on land. The seaman must be made to reaffirm that which he has always known and understood, namely, to obey the master's lawful commands or suffer the consequences for disobedience.

These are upset times. Our fighting ships—represented by the Navy—and our Merchant Marine—represented by such ships as the *S. S. City of Fort Worth*—have their very material part to play in our nation's future and its present safety. That future and our country's safety will be seriously jeopardized if seamen are legally permitted to strike.

> "Seamen must recognize that the nature of their calling, which gives them a unique status under the law, also imposes upon them obligations not common to shore occupations."[5]

The master's discharge of his boatswain for habitual drunkenness was upheld in *Texas Company v. National Labor Relations Board,* 120 F. (2d) 186 (C. C. A. 9th, 1941). In that case the Court held that the Board (which ordered re-employment) had ignored during the entire

[5] Economic Survey of the American Merchant Marine submitted to Congress by Joseph P. Kennedy, as Chairman of the United States Marine Commission—quoted with approval in *Rees v. United States,* 95 F. (2d) 784, 792 (C. C. A. 4th, 1938).

proceeding "the long established Congressional legislational for the protection of life at sea" and had misconceived "the powers of a ship's officers and managers necessary in such protection" and that the Board had erred "in failing to recognize that these maritime safety laws are paramount to the Labor Relations Act wherever the Board's proposed orders may increase the danger which the long established safety legislation of Congress seeks to prevent or lessen."

"The duties and obligations of the master of the ship in making up and controlling his crew cannot be determined by the study of the management of, say, a great automobile factory. . . . The master must have the power to compel the services of such men for the safety of all on board." *Texas Company v. National Labor Relations Board*, supra at page 187. This is all the more so when some of the strikers (like Warren, who was their spokesman, and Crassavaz, who was the boatswain) occupy some position of authority such as a spokesman or as an under-officer of a ship. "The men elected to represent the crew or a part of it, can make or break the discipline necessary in the vessel's navigation and management for the safety of everyone on board." *Texas Company v. National Labor Relations Board*, supra at page 189.

Moreover, irrespective of the unique status of the participants in the strike and of the place where the strike occurred, the petitioner had the right to discharge the seamen. The testimony in this case shows not only that the strike was what is known as a "sit-down" strike and, therefore, unlawful but also that the strikers themselves considered the strike to be a "sit-down" strike. *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240 (1939).

II. The Tenure of Employment of a Seaman Who Has Signed Shipping Articles for a Particular Voyage Terminates When He "Signs Off" at the Expiration of the Shipping Articles Unless the Seaman Affirmatively Establishes a Custom or Agreement to the Contrary.

The Shipping Articles which are required of the Master and his crew (Revised Statutes § 4520, 46 U. S. C. A. § 574) constitute the sole memorial of the crew's contract of employment.

The Court-below and the Board erred in holding that "the tenure of employment . . . was not terminated by the expiration of the shipping articles" (R. 27, 773).

The evidence adduced was insufficient to support a finding that the terms of employment embodied in the Shipping Articles had been modified. The burden was on the seamen to prove such a fact, but the evidence in this case did not meet the standard set forth in *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 306 U. S. 292 (1939).

First Officer Helland testified that it was the *custom* of the petitioner to tell the seamen when they were paid off whether or not petitioner desired them to continue to work on the vessel and to make the next trip. This was usually accomplished by re-signing the men who were to be reëmployed at the time they "signed off" from the previous voyage, and by telling at that time those seamen whom petitioner did not want to reship that their future services were not desired. (R. 300, 301). The only custom established by the evidence was that a seaman could consider he was reëmployed on the next voyage, if new shipping articles were not immediately signed and he had not heard anything to the contrary from his officers.

The only other testimony concerning a practice or custom was that of four of the five seamen who had not been offered reëmployment. Their testimony only related to what their status had been during the several times when they had not immediately signed new articles but had not received any instructions from their officers concerning further employment (R. 154, 184, 185, 200, 221, 222). In those cases the seamen actually continued at work on the ship in the intervals between their signing off and signing new shipping articles and were paid for such work.

In *National Labor Relations Board v. Waterman Steamship Company*, 309 U. S. 206 (1940) a custom was proved to the satisfaction of the Board and your Honorable Court that the seamen on the Waterman ships had a continuous employment. In that case, however, extensive testimony was adduced both from the crew and from the officers of the steamship company concerning practices as far back as 1924. Moreover, the factual situation in that case as well as the proofs submitted were so different that the Court below and the Board erred in applying that decision to the question involved in this proceeding. In the *Waterman case* the entire unlicensed crew and first steward of the *SS. Bienville* and all but three of the crew of the *SS. Fairland* were discharged after the vessels had returned from their respective voyages from Europe and the West Indies and had been laid up for dry-docking and repairs.

We submit that in this case the relationship of employer and employee had automatically terminated at the port of discharge. *The Velma L. Hamlin*, 40 F. (2d) 852 (C. C. A. 4th, 1930). Petitioner was under no obligation to reëmploy any seaman at the expiration of his articles, unless petitioner desired to do so.

III. The Right of an Employer to Have Representatives Present at an election to Determine Employees' Bargaining Representative Is Not Dependent Upon the Consent of the Labor Organizations Involved.

The proper conduct of any election requires that the parties affected by the election be entitled to have observers at the election to identify voters and to see that the balloting is fairly conducted. This right is fundamental to all elections and to make elections under the National Labor Relations Act an exception would be denying the employer a fair hearing and would violate the Fifth Amendment to the Constitution of the United States, notwithstanding the decision in *Marlin-Rockwell Corporation v. National Labor Relations Board*, 116 F. (2d) 586 (C. C. A. 2d, 1941), cert. den. — U. S. — (October Term, 1941, No. 1032, decided June 2, 1941). Petitioner should have had an opportunity to challenge the right of those whom it might have thought ineligible to vote and to defend the right of those whose vote might have been challenged by other parties present. Furthermore, the petitioner has no means of knowing and does not know whether or not the persons who voted under the names appearing on petitioner's payroll were actually the same persons then employed by petitioner. The opportunities for fraud and mistakes in the conduct of the election are obvious; the equally obvious means of guarding against them were rejected by the Board.

CONCLUSION.

We, therefore, submit that the petitioner was not guilty of any unfair labor practice; that the United States Circuit Court of Appeals for the Third Circuit erred in affirming the order of the National Labor Relations Board; and that

e petitioner's prayer for a writ of certiorari should be anted.

Respectfully submitted,

JOSEPH W. HENDERSON,
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Attorneys for Petitioner.

iladelphia, Pa.,
July 29, 1941.

FILE COPY
JAN 23 1942
CHARLES ELMORE

IN THE

Supreme Court of the United States

October Term, 1941.

No. 320.

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

NATIONAL MARITIME UNION OF AMERICA,
Intervening Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR PETITIONER.

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IN THE

Supreme Court of the United States.

No. 320. October Term, 1941.

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

AND

NATIONAL MARITIME UNION OF AMERICA,
Intervening Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR PETITIONER.

This case comes before the Court on writ of certiorari issued to review a final decree of the United States Circuit Court of Appeals for the Third Circuit.

OPINIONS BELOW.

The findings of fact, conclusions of law and order of the National Labor Relations Board, filed on April 22, 1940, (R. 17-44) are reported in 23 N. L. R. B. No. 2.

The opinion of the United States Circuit Court of Appeals for the Third Circuit, written by Circuit Judge

Maris, and concurred in by Circuit Judges Biggs, Jones and Goodrich (R. 769) with a dissent written by Circuit Judge Clark (R. 780) was filed on May 6, 1941, and is reported in *Southern Steamship Company v. National Labor Relations Board,* 120 F. (2d) 505.

JURISDICTION.

The jurisdiction of this Court to review the final decree of the Circuit Court of Appeals for the Third Circuit on a writ of certiorari is provided by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 299, § 1, 43 Stat. 938 (28 U. S. C. A. Section 347 (a)) and Section 10 (e) and (f) of the National Labor Relations Act, July 5, 1935, c. 372, § 10, 49 Stat. 453 (29 U. S. C. A. Section 160 (e) and (f)).

The final decree of the United States Circuit Court of Appeals for the Third Circuit was entered May 20, 1941 (R. 786). Petition for writ of certiorari was granted by this Court on October 13, 1941 (R. 792).

STATEMENT OF THE CASE.

The National Labor Relations Board instituted proceedings under the National Labor Relations Act against the petitioner, Southern Steamship Company, charging that petitioner had unlawfully terminated the employment of five members of the crew of the *SS. City of Fort Worth* and that petitioner had refused to bargain with the National Maritime Union of America [1] (hereinafter called "N. M.

[1] The National Maritime Union of America was permitted to intervene as a party to the proceedings in the United States Circuit Court of Appeals by order entered September 16, 1940. (R. 767.)

U.") after its certification by the Board. After hearing, the Board ordered Southern Steamship Company to reinstate with back pay the said five members of the crew and also six other members of the crew who had gone on a "sympathy" strike as a result of said termination and further ordered the petitioner to bargain collectively with the N. M. U. This order was affirmed by the United States Circuit Court of Appeals for the Third Circuit, and a decree enforcing the order was entered by said Court (R. 769, 786).

The petitioner has maintained and still maintains that:

(a) The seamen involved in this proceeding did not have the right to engage in a strike on board the *SS. City of Fort Worth* when she was moored to the dock at Houston, Texas, during her coastwise voyage from Philadelphia because they were seamen and also because they were under Shipping Articles; hence the failure to rehire the seamen engaged in said strike did not amount to an unfair labor practice within the meaning of the National Labor Relations Act;

(b) Irrespective of the strike by said seamen, their tenure of employment terminated when they "signed off" at the expiration of their Shipping Articles, and petitioner was not required to reëmploy them;

(c) The certification of N. M. U. was invalid because representatives of the petitioner had not been permitted to be present at the election, and petitioner was justified in refusing to bargain with said organization.

The controversy in this proceeding concerns voyage No. 201 of the *SS. City of Fort Worth* from Philadelphia, its home port, to Houston and return. On June 30, 1938, the crew signed Shipping Articles at Philadelphia, the home

port, before the local United States Shipping Commissioner, wherein, *inter alia,* they agreed "to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of said Master . . . and of their superior officers, in everything relating to the vessel . . ." (R. 681.)

The vessel sailed on July 1, 1938, with said crew. In the course of its voyage, while the *SS. City of Fort Worth* was docked at Houston, not its home port, thirteen members of the crew held a meeting on shore on Sunday, July 17, 1938. They claimed that they had previously requested a bargaining conference and also passes for the union delegates to board the ships while in port, and, having been informed that nothing had been accomplished concerning a bargaining conference or the securing of passes, they decided to strike for union recognition (R. 23, 129).

On the next day, Monday, July 18, 1938, the strike was started at 8 o'clock a. m. Tracey, an oiler, failed to turn the steam on deck and refused to obey the command of Paul,[2] the First Assistant Engineer, to do so. When Paul then stated he would put the steam on deck himself, Tracey stated that he would "take the firemen out of the fire room" (R. 23, 132). Paul then turned the steam on, and Tracey called Braun, a fireman, to put the "fires out". Braun thereupon "threw his pumps and came out." (R. 23, 133.) When Robinson, the Second Engineer, told Tracey that he would put the steam on deck himself, Tracey said that there would be no steam after eight o'clock (R. 355).

Ferguson, a fireman who relieved Braun at eight o'clock, refused to tend the fires, and joined the other strikers who were seated on the poop deck.

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[2] Misnamed "Pool" in various instances in the Record. See R. 23, 367.

At 10:30 o'clock that morning, Captain Rudan, the Master of the ship, (who had just returned from Galveston) ordered the thirteen striking members of the crew collectively and individually to "turn to", and they individually and collectively refused to do so (R. 23, 24, 435), Warren, the spokesman for the strikers, telling the Master that they were striking for union recognition and passes (R. 24).

After Captain Rudan had waited an hour to see if the strikers would obey his commands and return to work, he again ordered them to work (R. 162, 436), but the strikers still refused to perform their duties (R. 437). The Master then went ashore and brought aboard the local Deputy United States Shipping Commissioner, from Houston, who read the Shipping Articles to the crew and explained to them what their obligations were, namely, *inter alia*, "to be obedient to the lawful commands of the Master . . . and of their superior officers . . ." (R. 439).

Notwithstanding the orders of their superior officers and the warnings of the United States Shipping Commissioner, the thirteen striking seamen continued their strike and occupied the poop deck of the vessel during the rest of the day. The strike was terminated at about seven o'clock that evening after the petitioner's local attorney had promised to recommend to the petitioner that it issue passes to representatives of the N. M. U.[3] (R. 24, 25.)

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[3] The executive offices of the petitioner are located at Philadelphia. It is undisputed that no one at Houston had authority to make any agreement on behalf of petitioner permitting union delegates to board vessels, or recognizing any collective bargaining representative or waiving any misconduct of the crew in connection with the sit-down strike and their disobedience to orders of the vessel's officers.

The voyage was completed when the vessel arrived at Philadelphia, and on July 25, 1938, the employment of all of the ship's crew, including the thirteen strikers, was terminated by their "signing off" before the local United States Shipping Commissioner. (R. 685.)

After "signing off", Warren Pfuhl, Tracey, Ferguson, and Smith (five of the strikers) were informed by their superior officers that they would not be reshipped by the petitioner.[4]

When the other members of the crew learned that these five men would not be reshipped, seven more seamen [5] voluntarily left the ship and failed to "sign on" for another voyage.

SPECIFICATION OF ERRORS INTENDED TO BE URGED.

The petitioner intends to urge the following assigned errors:

1. Those errors relating to the question of the right of seamen who have signed and are serving on ship-board

[4] Petitioner has contended throughout these proceedings that the evidence adduced was insufficient to establish any custom or practice on the part of petitioner to vary the terms of the Shipping Articles and to hold that seamen when shipped by petitioner have a continuous tenure of employment as found under the evidence in *National Labor Relations Board v. Waterman Steamship Corp.*, 309 U. S. 206 (1940). Moreover, other pertinent and relevant facts (in addition to the failure to establish a custom contradicting terms of the Shipping Articles) distinguish and differentiate this case from the *Waterman case.* See discussion infra on pages 28 to 32, inclusive of Brief.

[5] Crassavaz, the boatswain; Reeves, an able-bodied seaman; Lathan and Burns, ordinary seamen; Hughes, an oiler; and Neeley and Holt, wipers. Later, Crassavaz, voluntarily returned for employment and was "signed on" for a subsequent voyage.

under United States Shipping Articles to engage in a strike on board a steamship moored to a dock in a foreign [6] port, i. e., Question No. 1 in petitioner's Petition for Writ of Certiorari and errors of the National Labor Relations Board assigned in paragraphs 13, 14, 16, 19, 21, 22, 24, 25, 27, 28, 31 and 34 of Petition of Southern Steamship Company to United States Circuit Court of Appeals for the Third Circuit to Review and Set Aside Order of National Labor Relations Board. (R. 5 to 12 inc.)

2. Those errors relating to the question whether the employment of a seaman who has signed United States Shipping Articles for a particular coastwise voyage is terminated when he "signed off" at the end of said voyage, i. e., Question No. 2 in petitioner's Petition for Writ of Certiorari and errors of the National Labor Relations Board assigned in paragraphs 13, 14, 16, 18, 19, 21, 22, 26, 27, 28, 31 and 34 of Petition of Southern Steamship Company to United States Circuit Court of Appeals for the Third Circuit to Review and Set Aside Order of National Labor Relations Board. (R. 5 to 12 inc.)

3. Those errors relating to the question whether the right of an employer to have representatives present at an election to determine the employees' bargaining representative is dependent upon the consent of the labor organizations involved, i. e., Question No. 3 in petitioner's Petition for Writ of Certiorari and errors of the National Labor Relations Board assigned in paragraphs 13, 14, 16, 17, 19, 21, 22, 29, 30 and 34 of Petition of Southern Steamship Company to United States Circuit Court of Appeals for the Third Circuit to Review and Set Aside Order of National Labor Relations Board. (R. 5 to 12 inc.)

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[6] As contracted with home port. See the dissenting opinion of Circuit Judge Clark. (R. 781.)

QUESTIONS PRESENTED.

1. Do seamen who have signed and are serving on ship-board under United States Shipping Articles have the right to violate those articles by engaging in a strike on board the steamship moored to a dock in a foreign port?[7]

2. Where a seaman has signed United States Shipping Articles for a particular coastwise voyage and "signs off" at the end of said voyage, is his employment then terminated?

3. Did the National Labor Relations Board err in ruling that, "in the absence of consent of the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives"?

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[7] As contrasted with home port. See the dissenting opinion of Circuit Judge Clark. (R. 781.)

ARGUMENT.

SUMMARY OF ARGUMENT.

I. SEAMEN UNDER SHIPPING ARTICLES DO NOT HAVE THE RIGHT TO ENGAGE IN A STRIKE ON BOARD A VESSEL MOORED TO A DOCK IN A FOREIGN [8] PORT.

II. THE TENURE OF EMPLOYMENT OF A SEAMAN WHO HAS SIGNED SHIPPING ARTICLES FOR A PARTICULAR VOYAGE TERMINATES WHEN HE "SIGNS OFF" AT THE EXPIRATION OF THE SHIPPING ARTICLES UNLESS THE SEAMAN AFFIRMATIVELY ESTABLISHES A CUSTOM OR AGREEMENT TO THE CONTRARY.

III. THE RIGHT OF AN EMPLOYER TO HAVE REPRESENTATIVES PRESENT AT AN ELECTION TO DETERMINE EMPLOYEES' BARGAINING REPRESENTATIVE IS NOT DEPENDENT UPON THE CONSENT OF THE LABOR ORGANIZATIONS INVOLVED.

I. Seamen Under Shipping Articles Do Not Have the Right to Engage in a Strike on Board a Vessel Moored to a Dock in a Foreign [8] Port.

The backbone of a strong merchant marine is its personnel, and a strong, trained, efficient, and well-disciplined crew is far more important than any equipment on the vessel itself.

The maintenance of an efficient and well-disciplined crew is founded and dependent upon the unique relationship between the master of a vessel and his crew and is entirely different from that between employers and employees engaged in industry on shore. A seaman by signing shipping articles to a certain extent surrenders his personal liberty during the life of the maritime contract. He agrees, among other things, to perform all his duties

[8] As contrasted with home port. See the dissenting opinion of Circuit Judge Clark (R. 781).

diligently and to obey all the lawful commands of the master and other officers.[9] The safety of the ship and the lives of the officers and the crew as well as the success of the voyage require implicit obedience by the crew to orders of the captain. This has always been the law of the sea and is known by all who go down to the sea in ships.

> "However uneducated or inexperienced, seamen cannot but know, that they and the master on the deck of the vessel are not acting together in the same capacity, and like equals or citizens, adopting or opposing measures, by each one's taste, or by the popular vote, as at a town meeting; but acting together for a time, one with large powers, for the benefit of all, and the others without those powers, for the same benefit of all, and by the previous agreement of all." [10]

While this unique relationship requires, among other things, implicit obedience to the commands of the master, the welfare of the seaman has not been sacrificed for discipline, and the seaman is well protected. Congress has clothed the seaman with statutory safeguards [11] and the

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[9] The shipping articles provide, inter alia: "And the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service to be duly performed the said Master hereby agrees to pay to the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the foregoing scale." (R. 681.)

[10] *United States v. Paterson*, 27 Fed. Case No. 16,037 at page 515, 517 (C. C. D. Mass. 1846).

[11] A majority of the crew may question the fitness of the vessel both in personnel and/or material. 46 U. S. C. A. §§ 653, 685.

seaman has always been regarded in legal proceedings as a ward of the admiralty.[12]

The articles are required to set forth a schedule for food and water. 46 U. S. C. A. § 713. See page 681 of the Record for the schedule in this case. Any three men may complain about the quantity and quality of either food or water. 46 U. S. C. A. § 662.

Vessels are also required to carry medicines and antiscorbutics; to provide one suit of woolen clothing on foreign voyages over fourteen days and to provide a safe and warm room for seamen on all voyages; to provide proper space and accommodations for the crew; and to maintain slop chests for sale of clothing to seamen. 46 U. S. C. A. §§ 666, 669, 80 and 670.

The requirements as to watches and the duties of the seamen are set forth in 46 U. S. C. A. § 673.

It would seem that these statutes express a policy to safeguard the seaman by restraining the power of the Master and subjecting the Master to penalties if he breaches any provision rather than to extend in any way the right of seamen to strike.

[12] See *Brown v. Lull*, 2 Sumner 443, 449 (C. C. Mass. 1836) in which Mr. Justice Story describes seamen as "a class of persons remarkable for their rashness, thoughtlessness and improvidence. They are generally necessitous, ignorant of the nature and extent of their own rights and privileges, and for the most part incapable of duly appreciating their value. They combine, in a singular manner, the apparent anomalies of gallantry, extravagance, profusion in expenditure, indifference to the future, credulity, which is easily won, and confidence, which is readily surprised. Hence it is, that bargains between them and shipowners, the latter being persons of great intelligence and shrewdness in business, are deemed open to much observation and scrutiny; for they involve great inequality of knowledge, and forecast, of power, and of condition. Courts of Admiralty on this account are accustomed to consider seamen as peculiarly entitled to their protection; so that they have been, by a somewhat bold figure, often said to be favorites of Courts of Admiralty. In a just sense they are so, so far as the maintenance of their rights, and the protection of their interests against the effects of the superior

The special relationship between the master and the crew has not materially changed notwithstanding the vast changes in the industrial pursuits on shore. Despite recent inventions, improved methods of communications, increased speed in operation and transportation, a ship still remains a world all of its own, and, when at sea, there is no power which can instantly be called upon to aid in any emergency. The position of a master of a vessel is not parallel to the superintendent of an industrial plant, and his responsibilities for the vessel, her cargo, and the safety of her passengers and crew are great. Without obedience from his crew, the master's position would be intolerable, and he would not be able to administer his trust with any degree of safety. Seamen, therefore, should not be permitted to resist the commands of the master in port any more than at sea, for to permit the former would encourage disobedience elsewhere.

When a man puts foot on the deck of a ship, he becomes part of a disciplined organization subject to the navigation laws of the United States. He should know that during the term of that voyage he will be required to give up his freedom both while the vessel is at sea and while at any port of call and that during that time he will be subject to all orders of the master. While the government of the United States has extended to seamen greater rights than those enjoyed by seamen of any other nation and has

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skill and shrewdness of masters and owners of ships are concerned."

This reasoned statement why seamen are considered "wards of the admiralty" likewise shows clearly one of the reasons why it is all the more necessary to maintain discipline on a vessel *at all times*. See also *Benedict on Admiralty* (6th Ed. 1940) § 621; *Robinson on Admiralty* (1939) p. 283.

imposed lighter compulsory duties, these rights do not include the right to strike while on a voyage. On the contrary, the liberal provisions enacted for the benefit of seamen and the benevolent attitude of our courts call for greater loyalty on the part of our seamen to obey the laws of our government and, more particularly, to obey the lawful commands of the master of the vessel.

The right to strike as granted to employees under the National Labor Relations Act does not apply to seamen on board a vessel in a foreign port. As stated in *Rees v. United States*, 95 F. (2d) 784, 792 (C. C. A. 4th 1938) "the nature of their calling . . . imposes upon them obligations not common to shore occupations," and their duty to obey the lawful commands of their master is superior to any right to strike. While the task in this case, as is so frequently the task in cases in litigation, "is to reconcile two rights in order to prevent either from destroying the other",[13] we submit that the right to strike is not superior to the maritime law. Moreover, no one can arbitrarily say that the right to strike must never be curtailed. Various types of strikes have long been forbidden in Britain, and British labor has not found itself in servitude.

The strike now under review by this Court was in the nature of a "sit-down" strike and occurred as follows.

The members of the crew of petitioner's steamship *City of Fort Worth* on June 30, 1938, signed Shipping Articles before a local United States Shipping Commissioner for a coastwise voyage from Philadelphia to Houston and other ports and return wherein they agreed, *inter alia*, to perform their duties and to obey the commands of their superior officers. (R. 681, 683.)

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[13] Opinion of Mr. Justice Frankfurter in *Minersville School District v. Gobitis*, 310 U. S. 586 at 594 (1940).

On Sunday, July 17, 1938, while ashore at Houston, not the home port, thirteen members of the crew decided to strike because the petitioner had not recognized the N. M. U. for purposes of collective bargaining and had refused passes on board its vessels for such representatives. (R. 23, 129.)

The following day, Monday, July 18, 1938, at about 8 a. m., the thirteen members of the crew, consisting of the boatswain, seamen, firemen, oilers, wipers, and the mess boy, staged a "sit-down" strike on board the vessel. This strike continued the entire day.

The men in the engine department refused to tend to fires and to turn steam on deck for the loading of cargo, while the men in the deck division refused to perform their duties. All of the strikers gathered together on the poop deck of the ship which place they occupied during the entire strike.

The Master ordered these seamen to perform their various duties both at 10:30 a. m. and at 11:30 a. m. (R. 24, 162, 435) and the First Officer, the Chief Engineer and the Steward likewise ordered the seamen under them to "turn to" (R. 272, 273, 380, 381, 408). The United States Shipping Commissioner was brought aboard by the Master, and he read to these strikers the Shipping Articles which they had signed and warned them of the consequences of their disobedience (R. 24, 437-440). Notwithstanding these orders and warnings, the strikers repeatedly refused to return to work but continued to occupy and possess the poop deck until seven o'clock that night when the strike was adjusted (R. 25, 137, 274).

The testimony shows that the strikers themselves considered the strike to be what is commonly known as a "sit-down" strike which was deliberately staged notwithstand-

ing possible danger to the vessel while moored to the dock. Although no damage was occasioned, serious consequences might have resulted from these acts. The officers were required to assist the six men of the crew who did not strike in the care of the fires and the loading of the cargo during the entire day of Monday, July 18, 1941. The evidence showed that without fires it would have been impossible to have maintained the necessary steam pressure for loading and to have maintained adequate fire protection for the ship. (R. 354.) Notwithstanding these known dangers, the strikers wilfully refused to perform their duties, took possession of the poop deck of the *SS. City of Fort Worth*, and were a law unto themselves for eleven hours. "Sit-down" strikes are unlawful, and an employer may refuse to retain in his employ those who illegally take and hold possession of his property. *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240 (1939).

The unlawfulness of the strike in this case acquired a peculiar significance different from that of strikes on land not only because of the unique relationship between the seamen and their employer but also because of the fact that the strike occurred on board the vessel while she was moored to a dock in a foreign [14] port.

The Court below in its majority opinion realized that "the question of the right of seamen to strike under the circumstances" in this case "is still an open one" (R. 777) but drew an artificial distinction between a strike in a foreign [14] port and a strike in a domestic port.[15]

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[14] As distinguished from home port. See dissenting opinion of Circuit Judge Clark (R. 781).

[15] "Upon reason, however, we think that there is no sound basis for depriving seamen of this right when, as here, their vessel is moored to the dock in a *safe domestic port*. Whether the right exists in a foreign port we need not now decide." (R. 777.) (Italics ours.)

Circuit Judge Clark recognized the fallacy of this reasoning when he said in his dissenting opinion:

> "To bottom a general whitewash upon that fact overlooks, in my opinion, the very essence of maritime traffic. Such essence, here, as in the air, is the 'happy landing', the safe return of the vessel from its voyage." (R. 784.)

The Court-below apparently conceded that the strike would have been unlawful if the ship had been at sea and, by inference (although it refused to decide), if the ship were in the port of a foreign power, but held that the strike was lawful in a port of the United States. These classifications represent distinctions without any basic differences. In each case the authority of the master is flaunted, and safety of the ship is jeopardized, notwithstanding the erroneous conclusion of the Court-below that the necessity for the master to be able to exercise his power over the crew is largely gone "when his vessel is safely in port" (R. 777).

In those cases where seamen who have engaged in strikes on board vessels during a voyage and have been found guilty of revolt and mutiny, the courts have not made any distinction between disobedience of sailors at sea and in port.[16]

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[16] *United States v. Smith*, 27 Fed. Cas. No. 16,344 (C. C. D. Pa. 1811) (Revolt while vessel lying in river about one and one-half mile below St. Ubes, within the bar); *United States v. Hamilton*, 26 Fed. Cas. No. 15,291 (C. C. D. Mass. 1818) (Revolt while vessel at Salem harbor); *United States v. Keefe*, 26 Fed. Cas. No. 15,509 (C. C. D. Mass. 1824) (Attempt to commit revolt on American vessel in foreign port); *United States v. Gardner*, 25 Fed. Cas. No. 15,188 (C. C. D. Mass. 1829) (Revolt in Boston harbor prior to sailing); *United States v. Haines*, 26 Fed. Cas. No. 15,275 (C. C. D. Mass. 1829) (Revolt in outer harbor of

In *United States v. Staly*, 27 Fed. Cas. No. 16,374 (C. C. D. R. I. 1846) the doctrine that there can be no mutiny in a safe harbor was rejected with the following comment on page 1290:

> "If obedience can be required on a vessel on the high seas, at a distance from the river, it should be in the river, or at anchor and before the clearance is obtained as well as after, or all order will be frustrated, and the due navigation and safety of the vessel rendered impossible. U. S. v. Hamilton [Case No. 15,291]; U. S. v. Stevens [Id. 16,394]. If there be anything in the objection, it applies to the jurisdiction of this court to try the offence, when committed within the stream and port, and not on the high seas, rather than to the offence itself not having been committed at all."

Boston ready to proceed to sea); *United States v. Cassedy*, 25 Fed. Cas. No. 14,745 (C. C. D. Mass. 1837) (Revolt in St. Helena while on whaling voyage in Pacific); *United States v. Roberts*, 27 Fed. Cas. No. 16,173 (C. C. S. D. N. Y. 1843) (Revolt on board American vessel lying in port of Havre, France, in an enclosed dock into which tide was let at will. The offense had not been tried in French courts); *United States v. Staly*, 27 Fed. Cas. No. 16,374 (C. C. D. R. I. 1846) (Endeavor to make revolt in Providence River before ship had "cleared" on her voyage); *United States v. Paterson*, 27 Fed. Cas. No. 16,037 (C. C. D. Mass. 1846) (Revolt on high sea on trip from New Orleans to Boston); *United States v. Seagrist*, 27 Fed. Cas. No. 16,245 (C. C. S. D. N. Y. 1860) (Endeavor to make revolt on American vessel lying in Port of Palmero, Sicily, and fastened to shore by cables but communicating with land by her boats); *Hamilton v. United States*, 268 Fed. 15 (C. C. A. 4th, 1920) (Revolt in Port of Hamilton, Bermuda); *Rees v. United States*, 95 F. (2d) 784 (C. C. A. 4th, 1938) (Sit-down strike in harbor of Montevideo, Uruguay); *United States v. Albers*, 115 F. (2d) 833 (C. C. A. 2d, 1940) (Sit-down strike in harbor of Colombo, Ceylon).

The statutes defining revolt and mutiny state that such offenses can be committed on a vessel "on the high seas, or on any other waters within the admiralty and maritime

The two most recent cases involving mutiny likewise made no distinction between whether the strike occurred in an "unsafe" port as distinguished from a "safe" port or in a "foreign" port as distinguished from the "home" port.

In *Rees v. United States*, 95 F. (2d) 784 (C. C. A. 4th 1938) the crew of the *SS. Algic*, while anchored in the harbor of Montevideo, Uruguay, staged a "sit-down" strike on board the vessel when they learned that a stevedore strike was in progress on shore and the vessel was being loaded by "scab" stevedores or strikebreakers. In that case, the American Consul came aboard the vessel and advised them that their actions were contrary to law. Late that afternoon, when the Captain threatened to put them in irons, they returned to work, but a delay of twenty-four hours had been sustained. Upon return to Baltimore, the crew was indicted and found guilty. The Court held that the acts of the seamen amounted to a usurpation of the command of the vessel and their refusal to obey orders was a violation of their duty as seamen, saying on page 792, that "the defendants, under the circumstances shown by the evidence, had no right to strike, and the trial judge was right in so instructing the jury."

In *United States v. Albers*, 115 F. (2d) 833 (C. C. A. 2d 1940) the crew staged a "sit-down" strike on the after deck of the *SS. Exca* while the vessel was at anchor at the harbor of Colombo, Island of Ceylon. They refused to do any work, contending that their articles had been broken when the master on the previous afternoon had refused a

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jurisdiction of the United States," 18 U. S. C. A. §§ 483-484. This includes all domestic harbors. The piracy statute provides that piracy can be committed only "on the high seas", 18 U. S. C. A. § 481. The distinction between the places where these offenses may be committed is significant.

"draw" of wages, although the Master had computed the amount of each man's draw later during the previous day and offered the draw to them early the following morning before the strike. The Court held that the Master was entitled to a reasonable time to meet the demand (although the Master did not ask for time) and that the demand must be made in good faith. The Court refused to decide whether the Master's refusal of the "draw" was vitiated by the prompt retraction accompanied by an offer to make the requested payment but held that the demand was not made in good faith. If the Master's refusal was a breach of the Shipping Articles and so considered by the crew, they should not have stayed on the ship. Remaining on board, the seamen showed that they considered "the refusal of their demand for pay as ending the shipping articles was a nullity". Circuit Judge Swan further very succinctly stated on page 836:

> "It would be an utterly intolerable construction of the statute that would permit seamen to remain on board, occupying the quarters of the crew and eating at the ship's expense, and yet freed from the duty to work or obey orders of the master."

Our Courts in civil suits involving labor disputes have likewise refused to sanction strikes on board vessels.

In *Peninsular & Occidental Steamship Co. v. National Labor Relations Board,* 98 F. (2d) 411 (C. C. A. 5th 1938), a delegate of the C. I. O. had been refused permission to board the vessel. Two of the crew who wanted to change union affiliation to the C. I. O., refused to work, staged a sit-down strike, refused to let the electrical equipment be used, with the result that the ship was prevented from sailing. The strike was then settled through intervention. Charges were filed with the Labor Board when the owners

of the vessel later took crews from the A. F. of L. union under a preferential contract which did not include members of the crew who had engaged in the sit-down strike. The order of the National Labor Relations Board, ordering reinstatement, was annulled by the Circuit Court of Appeals which said (pp. 414-415):

> "The owners of vessels, their masters and other officers, are required to exercise the highest degree of care and skill for the preservation of the lives of passengers and crews and to safely transport the cargo. This duty is superior to all other considerations in the operation of ships. Implicit obedience to the lawful orders of the master is required on a vessel. Without that there would be no safety. Engaging in sit-down strikes and taking possession of the ships, in defiance of their officers, was at least prima facie evidence that the crews were guilty of mutiny. 18 U. S. C. A. § 483. Hamilton v. U. S., 4 Cir., 268 F. 15, certiorari denied 254 U. S. 645, 41 S. Ct. 15, 65 L. Ed. 454. It is true these strikes had been settled without charges being made against the men but their actions in that respect would form a basis for considering their future attitude. A ship that is not manned by a competent crew is unseaworthy."

Petition for certiorari was denied in *National Labor Relations Board v. Peninsular & Occidental Steamship Co.*, 305 U. S. 653 (1938).

In *The Oakmar*, 20 F. Supp. 650 (D. C. Md. 1937) and in *The Losmar*, 20 F. Supp. 887 (D. C. Md. 1937) the owners filed possessory libels for the above vessels. The crews in each case had taken complete possession of each vessel, claiming a right to coerce the owner into establishing a higher scale of wages for members of the union to which they belonged. The Court in each case held that the crew was not entitled to remain on their respective vessels under

a sympathetic strike. In *The Oakmar, supra,* the Court directed the marshal to restore complete possession of the vessel to the owners. In *The Losmar, supra,* the crew voluntarily left the ship before a hearing was held on the order to show cause. However, in each case, Judge Coleman clearly and forcibly showed that the crew is not entitled to use illegal means, such as a sit-down strike, to arrive at an end which might have been reached by appropriate legal action.

The Court-below erred in holding that the right of seamen to strike on board a vessel *under circumstances present in this case* can be inferred from the two cases of *Weisthoff v. American-Hawaiian S. S. Co.,* 79 F. (2d) 124 (C. C. A. 2nd, 1935) cert. den. 296 U. S. 619 (1935) and *Black Diamond S. S. Corp. v. National Labor Relations Board,* 94 F. (2d) 875 (C. C. A. 2nd, 1938) cert. den. 304 U. S. 579 (1938).

In *Weisthoff v. American-Hawaiian S. S. Co., supra,* the former members of the crew of the *SS. Texan* filed a libel for wages. The crew had signed on at San Francisco for a voyage to Gulf and Atlantic ports and return. While at New York they struck for three watches, for pay under the 1929 Shipping Board wage scales, for the settlement of the West Coast dock strike, etc. They would not leave the ship until police were called aboard, and then they demanded their wages. The *SS. Texan* sailed that night with a new crew. The Court held that the statutory regulations concerning watches [17] had been broken *on the voyage* and that the seamen were entitled to their discharge on demand and to be paid their wages earned. The owners contended that the seamen's wages had been forfeited by the endeavor

[17] 46 USCA § 673.

to revolt. The Court rejected this defense saying that the contention was not sustained and that it did "not find more than the making of demands, some of which were ill-advised and called for action they should have known the master could not take, instead of putting their case to him on tenable statutory grounds which entitled them to their discharge and pay. It was rather a case of poor judgment and misunderstanding of their rights than the gross misconduct which will forfeit wages." [18]

This case nowhere implies that a strike on board a vessel is legal or may not constitute a mutiny, and the conclusion of the Court below and of some authors of legal articles [19] is erroneous and without foundation. The *Weisthoff case* goes no further than to hold that the breach by the master of his statutory duty entitled the crew to their wages and discharge, that their obligations as seamen had ceased, and that their right to wages had not been forfeited because they made demands on the wrong theory. Nowhere in the case is there an implication that a strike on board ship is of itself legal and nowhere is there any reference to "danger to the ship" or "safe harbor" or "home port." [20]

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[18] Ibid. at 125.

[19] Rothschild, *The Legal Implications of a Strike by Seamen*, 45 YALE L. J. 1181, 1191 (1936); Sapiro and Frank, *Mutiny at the Dock*, 25 CAL. L. REV. 41, 51 (1936); Labor Law—Right of Seamen to Strike, 37 COL. L. REV. 1294, 1295 (1938); *SS. Algic*, 1. NAT. LAWYERS GUILD Q. 144, 149 (1938). *Contra:* Labor Disputes in the Merchant Marine, Note 28 VIRGINIA L. REV. 79 (1941); Sit-down Strike on Shipboard, Note 23 CORNELL L. Q. 302 (1938); Seamen-Mutiny-Sit-down Strikes, Note 18 ORE. L. REV. 128, 136 (1938); Labor Law-Seamen-Reinstatement of Sit-down Strikers, 40 MICH. L. REV. 468 (1942).

[20] Compare the decision in the *Weisthoff case* with the more recent decision of the same court in the case of *United States v. Alber, supra*, where it was held that the breach of

Black Diamond S. S. Co. v. National Labor Relations Board, supra, is even less applicable. In that case there was no strike *on board* the vessel but the engineers voluntarily left their ships prior to sailings.

We submit that both upon authority and upon reason seamen do not have the right to engage in a strike on board a vessel moored to a dock in a foreign [21] port. The distinction between the home port and a "safe domestic" port is a real one.

The offices of the owners are usually at the home port, as is so in this case. When the vessel is docked in another port, either domestic or foreign, it is often difficult and at times impossible to communicate with anyone in authority in the case of any emergency. In this case, as in many other instances, it is quite possible that the Master of the vessel could more easily communicate with his superiors if in a port of a foreign nation, i. e., any of the eastern ports of Canada, than in a distant port of this country, i. e., the Gulf ports or the ports of our West coast.

When in any foreign [21] port the vessel is subjected to many hazards, even when moored to a dock, and the artificial distinction between ports seems to ignore the unique and peculiar relationship between the Master and his crew, and the statutory requirements imposed on the seamen as well as the Master. Discipline must be maintained at all times, and it is as imperative when the vessel is moored to a dock as when the vessel is on the high seas. Can it be said that a modern ship, with all its complicated mechanism

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a statutory duty (if there was a breach) did not permit the crew to remain on the vessel and refuse to work. *Supra* at pages 18 and 19.

[21] As contrasted with home port. See the dissenting opinion of Circuit Judge Clark (R. 781).

requiring constant attendance and vigilance against numerous risks, and with valuable stores and cargoes as well as officers, crew, and passengers is ever "safe" in any port or at sea unless manned by a competent and disciplined crew.

The supremacy of our maritime laws when in conflict with the National Labor Relations Act was recognized not only in the case of *Peninsular & Occidental Steamship Co. v. National Labor Relations Board, supra*, but also recently in the case of *Texas Company v. National Labor Relations Board*, 120 F. (2d) 186 (C. C. A. 9th, 1941) in which the Master's discharge of his boatswain for habitual drunkenness was upheld. In that case the Court held that the Board (which ordered re-employment) had ignored during the entire proceeding "the long established Congressional legislation for the protection of life at sea" and had misconceived "the powers of a ship's officers and managers necessary in such protection" and that the Board had erred "in failing to recognize that these maritime safety laws are paramount to the National Labor Relations Act . . . wherever the Board's proposed orders may increase the danger which the long established safety legislation of Congress seeks to prevent or lessen."

> "The duties and obligations of the master of the ship in making up and controlling his crew cannot be determined by the study of the management of, say, a great automobile factory. . . .
>
> "The master must have the power to compel the services of such men for the safety of all on board." *Texas Company v. National Labor Relations Board, supra*, at page 187.

This is all the more so when some of the strikers (like Warren, who was their spokesman, and Crassavaz, who was

the boatswain) occupy some position of authority such as a spokesman or as an under-officer of a ship.

> "The men elected to represent the crew or a part of it, can make or break the discipline necessary in the vessel's navigation and management for the safety of everyone on board." *Texas Company v. National Labor Relations Board, supra,* at page 189.

The ultimate safety of a vessel requires discipline at all times wheresoever the ship may be—whether in port or at sea. See 40 MICH. L. REV. 468 at 470 (1942).

> "To advocate strikes on board a ship at its pier merely on the basis that, in such circumstances, the safety of lives and cargo is not endangered, is to take a short-sighted point of view. No doubt, while a vessel is in port, the immediate security of all concerned is not greatly jeopardized by the crew's refusal to do its duty. But it is not alone the immediate safety or the present security which must be considered. There is an ultimate safety which must be protected. For this there must be discipline at all times, whether the ship be at sea or tied to shore in the safest of harbors. A master who cannot control his crew in port is not likely to be able to control it at sea. To allow the seamen to resist lawful commands in one place is but to encourage similar resistance elsewhere." [22]

The Department of Commerce which is primarily concerned with the safety of American vessels, still considers lack of discipline the main cause of unsafety. See the Maritime Commission report, Economic Survey of the American Merchant Marine, p. 43, H. Doc. No. 392, 75th Cong., 2nd sess. (1937).

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[22] Sit-down Strike on Shipboard, Note 23 Cornell Law Quarterly, 302, 306-307 (1938).

From time immemorial the master of the ship has been in supreme command. The reason for this authority is obvious and well known to the layman as well as to the seaman. To permit seamen to strike under circumstances like those in the instant case would result in a complete breakdown and demoralization of the responsibility for life and property aboard a ship. Seamen from earliest days have known that the master is the final authority on board his vessel. The law which permits strikes on land cannot possibly be held applicable to those who go down to the sea in ships. If seamen who feel they are aggrieved are permitted to flout the authority of their master by refusing to obey his lawful commands and then engaging in a strike, the law of the sea, so far as responsibility of the master and crew are concerned, would be revolutionized. The far-reaching effects of such a revolutionary change are obvious.

There must be a different law for strikes on ships and those on land. The seaman must be made to reaffirm that which he has always known and understood, namely, to obey the Master's lawful commands or suffer the consequences for disobedience.

These are times of great emergencies when the safety as well as welfare of our country is at stake. We are presently fighting for our very existence. Our fighting ships—represented by the Navy—and our Merchant Marine—represented by such ships as the *S. S. City of Fort Worth*—have their very material part to play in our nation's present safety and security as well as its future.

Many young men while not enlisting in the armed forces of our country are now receiving instruction through the Maritime Commission and learning the essentials of sea duty. They will man the merchant vessels which this country has been and will be building for maintenance of its

supply lines and its existence. These seamen, while not in the fighting forces, will be performing a vital service in our nation's present campaign equal in importance to that of enlisted men. The present emergency is not only a matter of ships, planes, and equipment; it is also one of properly trained and properly disciplined men. American seamen, conscious of their full duties and obligations, are equally necessary to our defense. If seamen are permitted to strike under conditions similar to those in the instant case, we will be taking a decided step backward. We will be officially sanctioning disobedience and lack of discipline upon our merchant marine. In short, we will be jeopardizing the present and future safety of our country.

II. The Tenure of Employment of a Seaman Who Has Signed Shipping Articles for a Particular Voyage Terminates When He "Signs Off" at the Expiration of the Shipping Articles Unless the Seaman Affirmatively Establishes a Custom or Agreement to the Contrary.

The Shipping Articles which are required of the Master and his crew constitute the sole memorial of the crew's contract of employment.[23] They are full and complete in themselves, and, generally speaking, are more for the protection of the seamen than for the Master and the owner.

The Shipping Articles detail, inter alia, the nature and extent of the voyage to be undertaken, the extent of said employment, the wages to be received, the capacity in which the various members of the crew are to serve, the provisions to be allotted to the crew during the voyage and contain a covenant by the crew to perform their duties and to obey their officers. In addition, space is provided for the

[23] Revised Statutes § 4520; 46 U. S. C. A. § 574.

insertion of any additional stipulation to which the parties may agree in connection with this contract of employment (R 681).

Shipping Articles were signed by all the officers and members of the crew of the *S. S. City of Fort Worth* on June 30, 1938 for a voyage from Philadelphia to Houston and return. They were signed at Philadelphia before the local United States Deputy Shipping Commissioner and show that the contract of employment was for that particular voyage. Said articles were introduced into evidence (R. 360-362) and a reproduction of said articles appears in the record (R. 681-689).

When the *S. S. City of Fort Worth* completed her voyage at the Port of Philadelphia on July 25, 1938, all of the crew were "signed off" (R. 685). However, after "signing off", Seamen Warren and Pfuhl, Oiler Tracey, Fireman Ferguson, and Mess Boy Smith were informed by their superior officers that they would not be reshipped. After the other members of the crew learned that the aforesaid five men would not be reshipped, seven more men voluntarily left the ship and failed to "sign on" for another voyage. These men were Boatswain Crassavaz, Seamen Reeves, Lathan and Burns, Oiler Hughes and Wipers Neeley and Holt.[24]

The Board, which ordered reinstatement of the aforesaid men, found that the tenure of employment of the seamen was "not terminated by the mere expiration of shipping articles" and "that on July 25, 1938 the employment

[24] Subsequently, Boatswain Crassavaz returned for employment and was "signed on" by petitioner for a subsequent voyage. There is no evidence, whatsoever, to indicate that the six other members of the crew, who voluntarily decided not to sign on, ever endeavored to return to the employment of petitioner.

of the five men named in the complaint did not automatically terminate" (R. 27, 28). This finding was affirmed by the Court-below (R. 773). Both the Board and the Court-below relied on the recent case of *National Labor Relations Board v. Waterman Steamship Corp.*, 309 U. S. 206 (1940), as authority for this mixed finding of fact and conclusion law.

The evidence in this case demands a contrary conclusion.

The burden was upon the seamen to prove that the terms of employment embodied in the Shipping Articles had been modified, but they failed to meet this burden. The evidence in this case was not sufficient to support any finding that their contracts of employment were subject to such a custom or practice.

The only custom established by the evidence was that a seaman could consider he was reëmployed on the next voyage, if new shipping articles were not immediately signed and he had not heard anything to the contrary from his officers.

First Officer Helland testified that it was the *custom* of the petitioner to tell the seamen when they were paid off whether or not petitioner desired them to continue to work on the vessel and to make the next trip. This was usually accomplished by re-signing the men who were to be reëmployed at the time they "signed off" from the previous voyage, and by telling at that time those seamen whom petitioner did not want to reship that their future services would not be desired. (R. 300, 301.)

The only other testimony concerning a practice or custom was that of four of the five seamen who had not been offered reëmployment. Their testimony only related to what their status had been during the several times when

they had not immediately signed new articles but had not received any instructions from their officers concerning further employment (R. 154, 184, 185, 200, 221, 222). Moreover, in those instances the seamen actually continued at work on the ship in the intervals between their signing off and signing new shipping articles and were paid for such work.

Tracey had only been employed by petitioner for a period of sixteen months. He testified that he usually signed articles for another voyage at the same time as he signed off the last voyage, but that on three or four times he had not signed the new articles until two or three days later (R. 154), on which occasions he continued to work for the company and was paid (R. 154).

Ferguson worked for the company about one year, and he testified that he had always signed on the same time that he signed off except on one occasion when the vessel was in drydock for three or four days during which period he was paid for work aboard the ship (R. 184, 185).

Smith had testified that he made twenty-five trips and on five occasions did not sign on immediately but worked and was paid during the intervening time of two or three days (R. 200).

Pfuhl, who had taken ten trips, testified that on one occasion he had not signed on immediately as the vessel at that time went into drydock for seven days during which time he worked for the company and was paid for his routine work (R. 221, 222).

Warren did not testify.

Thus, it is apparent that the record in this case is without any substantial evidence to support a finding that it was the custom of petitioner to consider that its seamen were under a tenure of continuous employment notwith-

standing they had executed Shipping Articles for a specific voyage.

An examination of the facts in the case of *National Labor Relations Board v. Waterman Steamship Corp., supra,* will show that said case was decided on its particular and peculiar facts which are entirely different from the facts in the instant case.

In the *Waterman case, supra,* when the vessels *SS. Bienville* and *SS. Fairland* had completed their respective voyages to Europe and the West Indies, they were laid up for dry-docking and repairs, and the entire unlicensed crew and first steward of the *SS. Bienville* and all but three of the crew of the *SS. Fairland* were discharged by the respondent company. In that case Your Honorable Court examined an extensive record concerning the custom and practice of the Waterman Steamship Company. This testimony came not only from officers and members of the crew but also from executives of the steamship company, covering a period as far back as 1924. As expressed by Mr. Justice Black, the numerous men who testified "had in various capacities followed the sea in the aggregate for a hundred years.[25]

The evidence in this case shows a factual situation so different from that in the *Waterman case* that the Board and the Court-below erred in finding that the seamen in the instant case had a continuous tenure of employment on the authority of the *Waterman case.*

It does not follow that *all* steamship companies have modified their Shipping Articles merely because one particular company has done so. The modification must be proved in each case by substantial evidence. The practice

[25] *National Labor Relations Board v. Waterman Steamship Corp., supra* at page 218.

of various steamship companies in the employment of their crews and the manning of their vessels varies in accordance with the needs, customs and practices of each particular company. It is well known that the shift in the personnel of a ship's unlicensed crew is very large and that seamen tend to move from one vessel to another depending upon many factors,—their desire to visit other ports, to be with other seamen, and generally to make a change. When seamen sign the articles for a specific voyage, they contemplate making that voyage and not necessarily being thereafter engaged in a continuing employment after the completion of the voyage, and steamship companies generally understand that their seamen are employed on the basis of a particular voyage and not under a continuing contract of employment.

We submit that in this case the relationship of employer and employee had automatically terminated at the port of discharge. *The Velma L. Hamlin,* 40 F. (2d) 852 (C. C. A. 4th, 1930). Petitioner was under no obligation to reëmploy any seaman at the expiration of his articles, unless petitioner desired to do so.

III. The Right of an Employer to Have Representatives Present at an election to Determine Employees' Bargaining Representative Is Not Dependent Upon the Consent of the Labor Organizations Involved.

The Board's order found that petitioner was guilty of an unfair labor practice in refusing to enter into collective bargaining with the N. M. U. This finding was based upon the Board's finding that its certification of the N. M. U. as the exclusive bargaining agency was valid. By stipulation entered into between the Board and petitioner the va-

lidity of this certification is dependent upon the correctness of the Board's ruling that "in the absence of consent by the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives." (R. 114.)

The proper conduct of any election requires that the parties affected by the election be entitled to have observers at the election to identify voters and to see that the balloting is fairly conducted. This right is fundamental to all elections and to make elections under the National Labor Relations Act an exception would be denying the employer a fair hearing and would violate the Fifth Amendment to the Constitution of the United States, notwithstanding the decision in *Marlin-Rockwell Corporation v. National Labor Relations Board,* 116 F. (2d) 586 (C. C. A. 2d, 1941), cert. den., 313 U. S. 594 (1941). Petitioner should have had an opportunity to challenge the right of those whom it might have thought ineligible to vote and to defend the right of those whose vote might have been challenged by other parties present. Furthermore, the petitioner has no means of knowing and does not know whether or not the persons who voted under the names appearing on petitioner's payroll were actually the same persons then employed by petitioner. The opportunities for fraud and mistakes in the conduct of the election are obvious; the equally obvious means of guarding against them were rejected by the Board.

CONCLUSION.

We, therefore, submit that petitioner was not guilty of any unfair labor practice and should not be required to reinstate or pay back pay to any of the five members of the crew to whom petitioner had decided not to offer reemployment or to any of the six members of the crew who

voluntarily went on a "sympathy" strike and that the petitioner should not be required to bargain with N. M. U.

The seamen, having signed Shipping Articles for a specific voyage, had no right to engage in a "sit-down" strike on board the *SS. City of Fort Worth* while docked at the Port of Houston during said voyage and, irrespective of said "sit-down" strike, the seamen's employment was terminated at the end of said voyage.

The decree of the Circuit Court of Appeals for the Third Circuit, granting enforcement of the order of the Board, should be reversed and the findings, conclusions, decision and order of the Board should be in all respects vacated, annulled, and set aside.

Respectfully submitted,

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FILED

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No. 320

In the Supreme Court of the United States

OCTOBER TERM, 1941

SOUTHERN STEAMSHIP COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 320

SOUTHERN STEAMSHIP COMPANY, PETITIONER

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NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinions of the Circuit Court of Appeals (R. 769–785) [1] are reported in 120 F. (2d) 505. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 14–44) are reported in 23 N. L. R. B., No. 2.

[1] Pursuant to stipulation of the parties (R. 790–791), the printed record herein for purposes of the petition for a writ of certiorari consists of the appendix to the brief of petitioner, filed in the court below, and the proceedings before the United States Circuit Court of Appeals for the Third Circuit.

JURISDICTION

The decree of the Circuit Court of Appeals (R. 786-789) was entered on May 20, 1941. The petition for a writ of certiorari was filed on July 30, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether under the National Labor Relations Act seamen may be discharged for having engaged in a peaceful strike on board a vessel on which they worked and which was safely moored in a domestic port but not the home port.

2. Whether there is substantial evidence to support the Board's finding that the signing off of shipping articles did not terminate the tenure of employment of petitioner's seamen.

3. Whether the Board abused its discretion in refusing to permit the presence of representatives of the employer at an election held under Section 9 of the National Labor Relations Act to determine collective bargaining representatives.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in the Appendix.

STATEMENT

In proceedings under Section 9 of the Act in which petitioner, the National Maritime Union of America (herein called the Union), and the International Seamen's Union of America participated, the Board on July 16, 1937, issued its Decision and Direction of Election (R. 19, 671). Pursuant thereto, an election to determine collective bargaining representatives was conducted by the Board's Regional Director. On January 3, 1938, the Regional Director issued a report finding that the results of the election showed that a majority of the eligible employees had voted for the Union (R. 759–761). Petitioner filed objections to the election and to the Regional Director's report on the ballot; the objections were grounded on the refusal to permit the presence of company representatives at the balloting on one of the vessels (R. 76–78, 762–764). On January 26, 1938, the Board dismissed petitioner's objections and certified the Union as exclusive representative of petitioner's employees within the appropriate unit (R. 671–674).

Susequently, upon charges filed by the Union alleging that petitioner had engaged in unfair labor practices in violation of Section 8 (1), (3), and (5) of the Act, and following a hearing and other usual proceedings under Section 10 of the Act, the Board on April 22, 1940, issued its findings of fact, conclusions of law, and order (R. 14–44). So far as here material, the facts,

as found by the Board and as shown by the evidence, may be summarized as follows:[2]

Following the certification on January 26, 1938, of the Union as exclusive bargaining representative, the Union repeatedly requested petitioner to hold a collective bargaining conference with it; petitioner did not accede to any of these requests and did not even reply to most of them (R. 21–22; R. 92–99, 108–112, 589–592). The Board found that on or about January 26, 1938, and at all times thereafter petitioner thereby refused to bargain collectively in violation of Section 8 (5) and (1) of the Act (R. 22, 40).

Primarily because of petitioner's unlawful refusal to bargain with the Union, 13 unlicensed seamen of the *City of Fort Worth,* who were members of the Union, struck on board that vessel on July 18, 1938, while she was moored to the dock at Houston, Texas, during the course of a coastal voyage (R. 22–25, 28–29; R. 128–131, 179–181, 431–433, 593–596). At 8 a. m. the strikers failed to turn on steam for loading cargo (R. 23; R. 182, 351–356). They withdrew to the poop deck, which serves as the general meeting place of the seamen when off duty, and rejected the requests and orders of the officers and a deputy United States Shipping Commissioner to abandon the strike (R. 23–24; R. 138–140, 165–169, 209–210,

[2] In the following statement the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

219–220, 269–274, 356, 369, 380–383, 431–440, 500). They maintained sufficient steam, however, for the operation of the ship's sanitary and safety appliances and remained seated on the poop deck without attempting to interfere with the normal shipboard operations performed by the officers and nonstriking crew members (R. 23–25, 29; R. 130–131, 135–137, 182, 241–242, 290–293, 323, 375, 387–388, 404, 499–502, 595, 596). The strikers were not at any time ordered to leave the ship (R. 24, 30; R. 404, 513). At 7 p. m. the same day, after petitioner's local attorney promised that petitioner would meet with the Union in an effort to negotiate an agreement, the strikers resumed their stations and the ship sailed on schedule (R. 24–25; R. 142–149, 274–275, 292–293, 450–453, 483, 620–621).

On July 25, at the end of the voyage and upon the signing off of shipping articles at the home port of Philadelphia, petitioner refused to reship five of the seamen because of their participation in the strike (R. 26, 32–37; R. 151–155, 185–186, 195, 201–202, 223–225, 284, 289–290, 298, 338, 391, 394, 493–494, 520–521, 533–534). Seven other seamen consequently struck and left the ship in protest against petitioner's discriminatory action (R. 26, 38–39; R. 156–157, 202, 226, 244–245, 248–249, 255–256). The

[3] The captain and ship's officers did not regard the strikers as having taken possession of the ship (R. 29–30; R. 404, 499–500).

Board found that the five seamen were discharged in violation of Section 8 (3) and (1) of the Act, and that the strikes of July 18 and 25, 1938, were caused by petitioner's unfair labor practices (R. 25, 26, 32–39).

The Board's order required petitioner to cease and desist from its unfair labor practices, to bargain collectively with the Union upon request, to offer reinstatement with back pay to the five seamen against whom petitioner had discriminated, to offer reinstatement upon application to the seamen who went on strike on July 25, and to post appropriate notices (R. 40–44).

Thereafter, petitioner filed in the court below its petition to review and set aside the Board's order (R. 1–13); the Board requested enforcement (R. 45–52). The case was argued on October 8, 1940, before three judges (R. 767–768); on February 7, 1941, the case was restored to the argument list for rehearing before the court *en banc* (R. 768). The case was heard and decided by the court *en banc* (R. 768–769).[4] On May 6, 1941, the court below

[4] The question whether a circuit court of appeals may be composed of all the circuit judges in active service, sitting *en banc*, is now before this Court in *Textile Mills Securities Corp.* v. *Commissioner of Internal Revenue*, No. 34, this Term, certiorari granted, March 31, 1941. It has also been raised in *Oughton* v. *National Labor Relations Board*, No. 98, this Term, petition for writ of certiorari filed May 22, 1941, and *Newark Morning Ledger Co.* v. *National Labor Relations Board*, No. 307, this Term, petition for certiorari filed July 24, 1941. Petitioner in the instant case does not raise the question.

handed down its opinion directing enforcement of the Board's order with a modification not here material (R. 769–780). The court's decree was entered on May 20, 1941 (R. 786–789).

ARGUMENT

1. Petitioner contends (Pet. 2, 7–8, 11–18) that seamen who engage in a peaceful strike on board a vessel moored in a safe domestic harbor are guilty of revolt and mutiny, and therefore forfeit their rights to the protection of the National Labor Relations Act against discharge for concerted union activity. Neither logic nor law supports this contention. As the court below held (R. 774–780), and as students of the subject have recognized (Rothschild, *The Legal Implications of a Strike by Seamen,* 45 Yale L. J. 1181; Sapiro and Frank, *Mutiny at the Dock,* 25 Calif. L. Rev. 41), modern industrial conditions require that seamen, no less than workers on land, have the right in port to withhold their collective services in order to achieve their economic demands or, as here, in order to enforce the right of collective bargaining unlawfully denied them by their employer. Without reference to the wisdom of the policy suggested by the petitioner, it is clear that the Act does not provide for the exception which petitioner now urges. On the contrary, Congress, by the terms of the Act, has broadly guaranteed the right to "any employee" "to engage in concerted activities, for the purpose of collective bargaining or other

mutual aid or protection" (Sections 2 (3), 7, 8 (1)).[5]

Even apart from the clear terms of the Act, it is plain that seamen in a harbor of safety neither are denied the right to strike nor are they guilty of revolt or mutiny if they withhold their services. *Weisthoff* v. *American-Hawaiian S. S. Co.*, 79 F. (2d) 124 (C. C. A. 2), certiorari denied, 296 U. S. 619; *Black Diamond Steamship Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2), certiorari denied, 304 U. S. 579; *The Blake*, W. Rob. 73, 166 Eng. Rep. 500, 506; *The South Portland*, 111 Fed. 767 (D. Wash. N. D.); *Buddington* v. *Smith*, 13 Conn. 333. None of the cases cited by petitioner (Pet. 14–18) is to the contrary. In *Rees* v. *United States*, 95 F. (2d) 784 (C. C. A. 4), the court expressly pointed out that the question whether "the crew of a vessel which is moored to a dock or is at anchor in a safe harbor have the right to strike * * * is not presented for decision in this case" (95 F. (2d) at 792). In *Peninsular & Occidental S. S. Co.* v. *National Labor Relations Board*, 98 F. (2d) 411 (C. C. A. 5), certiorari denied, 305 U. S. 653, it was not the act of striking which afforded lawful ground

[5] The only workers excluded from the category of "employee" are "any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse" (Section 2 (3)). In *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, this Court upheld the application to seamen of the protective guarantees of the Act.

for discharge, but since the strikers unlawfully took possession of the vessel, committed sabotage, and threatened to renew such unlawful acts, the discharges were regarded by the court as "a necessary measure for the safety of the ships" (98 F. (2d) at 414–415).[6] Similarly, in both *The Losmar,* 20 F. Supp. 887 (D. Md.), and *The Oakmar,* 20 F. Supp. 650 (D. Md.), the strikers had refused to leave the vessel when ordered to do so by the master and consequently were found by the court to be trespassers.[7] At most, in the instant case the strikers were merely ordered to abandon the strike, not to leave the ship (R. 24, 30).

Petitioner's further contention (Pet. 8, 12–13, 18) that the strike was an unlawful "sit-down" strike and the discharge of the strikers therefore justified under the doctrine of *National Labor Relations Board* v. *Fansteel Metallurgical Corp.,* 306 U. S. 240, is also without merit. The concurrent findings of the Board (R. 23-24, 25, 29–30) and of

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[6] Petitioner suggests that although no damage to the ship was occasioned by the strike, the ship's safety was imperiled because "serious consequences might have resulted" (Pet. 13). But the Board (R. 23, 25) and the court below (R. 775) expressly found that sufficient steam had been maintained to operate the ship's sanitary and safety devices and that the ship was admittedly not in danger at any time. Petitioner does not attack these findings as without substantial supporting evidence.

[7] Wholly inapposite is *Texas Co.* v. *National Labor Relations Board,* 120 F. (2d) 186 (C. C. A. 9) in which the court held merely that to reinstate an habitual drunkard as boatswain would not effectuate the policies of the Act (p. 190).

the lower court (R. 774) establish that the strikers did not engage in violence or other unlawful conduct and did not take or hold possession of the ship against the authority of their employer; on the contrary they simply remained seated on the poop deck, their usual place to meet when off duty, and were at no time ordered to leave the ship which was their home. The quantitative and qualitative differences between the employee conduct in the *Fansteel* case and the conduct involved here are apparent. In similar circumstances, the *Fansteel* rule has been held inapplicable. *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61, 68 (C. C. A. 2) modified and affirmed 309 U. S. 629.*

2. Petitioner urges (Pet. 3, 7, 8, 19–20) that the Board's finding that the tenure of employment of petitioner's seamen did not terminate by the signing off of shipping articles (R. 27–28) is not supported by substantial evidence. The court below sustained the finding (R. 773–774). The evidence amply sustains the concurrent holdings of the

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* See also *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 118 F. (2d) 874, 888 (C. C. A. 1), certiorari denied, No. 1052, October 1940, Term; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. (2d) 167, 176 (C. C. A. 3), certiorari denied, 308 U. S. 605; *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. (2d) 472, 479 (C. C. A. 3), certiorari denied on this point, 309 U. S. 684; *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179, 183 (C. C. A. 6); Note, *Employee Misconduct Under The Wagner Act; Developments Since The Fansteel Case*, 39 Col. L. Rev. 1369.

Board and the reviewing court upon this issue of fact. *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 461. The discharged seamen had worked for petitioner continuously for periods ranging from 6 weeks to 18 months [9] (R. 27; R. 124–125, 177–178, 196–197, 213, 278); petitioner's seamen customarily signed new articles when signing off the old and even when they did not, they nevertheless considered themselves engaged for the next voyage unless expressly notified to the contrary (R. 27; R. 153–154, 184–185, 199–201, 221–223, 300–301); and, finally, petitioner's officers significantly referred to the five men as having been "discharged" or "fired" because of their strike activity (R. 33, 35–36; R. 201–202, 224–225, 284, 338, 390–391, 394, 461–462, 491–492, 515). The evidence, in short, was essentially like that before this Court in *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 213–217; see also *South Atlantic S. S. Co.* v. *National Labor Relations Board*, 116 F. (2d) 480 (C. C. A. 5), certiorari denied, No. 969, October Term 1940. In any event, petitioner's contention, even if true, is immaterial, for if the employment relation did terminate, petitioner's refusal to rehire the men because of their strike activity was, as the Board found in the alternative (R. 28), equally an unfair labor practice under Section 8 (3) and (1) of the Act. *Phelps Dodge Corp.* v. *National Labor Rela-*

[9] Each round trip voyage of the *City of Fort Worth* took about 25 days (R. 27; R. 184, 213, 278).

tions Board, Nos. 387, 641, October Term, 1940, decided April 28, 1941.

3. Petitioner challenges (Pet. 3, 7, 21) the certification of the Union as exclusive representative, and the consequent finding of refusal to bargain, on the ground that the Board refused to permit employer representatives to be present at the election. The holding of the court below (R. 770–771) that the Board did not thereby abuse its discretion is in accord with the only other decision upon the question. *Marlin-Rockwell Corp.* v. *National Labor Relations Board,* 116 F. (2d) 586 (C. C .A. 2), certiorari denied, No. 1032, October Term, 1940, decided June 2, 1941.[10] While the presence of employer representatives may be helpful to Board representatives who conduct the election in their duty to determine the eligibility of the voters, the presence of company representatives may have the effect, though perhaps unintended, of inhibiting the employees so that the election results do not reflect the free and independent choice contemplated by the Act.[11] Accordingly, as a general rule, the Board

[10] The petition for certiorari in the *Marlin-Rockwell* case strongly urged the point.

[11] As the court below stated: "* * * it [the Board] may take the view, as it evidently did in this instance, that since the presence of such representatives, unless consented to, might operate in some degree to coerce the employees and prevent them from expressing their free choice, some other means of identifying voters should be employed. The Act confers no right upon the employer to have its representatives present and it is obvious that their presence is not essential to a fair election" (R. 770–771).

has not allowed employer representatives to be present at the polls unless the labor organization involved consents. *Third Annual Report of the Board* (1938), p. 147.[12] Nor, as the lower court pointed out (R. 771), has petitioner shown any prejudice. In these circumstances, the propriety of the exercise of the Board's discretion does not present any question calling for review.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1941.

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[12] Employer representatives were not permitted to be present at elections conducted by the old National Labor Board which administered section 7 (a) of the National Industrial Recovery Act. Lorwin & Wubnig, *Labor Relations Boards* (Brookings Institution, 1935), pp. 159–161. See also, *First Annual Report of the National Mediation Board* (1935), p. 4.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage memberships in any labor organization: * * *
>
> * * * * *
>
> (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).
>
> SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the

employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 320

SOUTHERN STEAMSHIP COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

AND

NATIONAL MARITIME UNION OF AMERICA, INTERVENOR

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinions of the Circuit Court of Appeals (R. 769–785) are reported in 120 F. (2d) 505. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 14–44) are reported in 23 N. L. R. B. 26.

JURISDICTION

The decree of the Circuit Court of Appeals (R. 786–789) was entered on May 20, 1941. The peti-

tion for a writ of certiorari was filed on July 30, 1941, and was granted on October 13, 1941. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether under the National Labor Relations Act seamen may be discharged for having engaged, as a result of their employer's unfair labor practices, in a peaceful strike on board the vessel on which they worked, which at the time of the strike was safely moored to the dock in a port of the United States.

2. Whether there is substantial evidence to support the Board's finding that the signing off of shipping articles did not terminate the tenure of employment of petitioner's seamen.

3. Whether the Board abused its discretion in refusing to permit the presence of representatives of the employer at an election held under Section 9 of the National Labor Relations Act to determine collective bargaining representatives.

STATUTE INVOLVED

The statutory provisions primarily involved are Sections 8 and 9 of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*). These provisions, and other statutes referred to in the argument, are set forth in the Appendix, *infra*, pp. 70–82.

STATEMENT

Petitioner owns and operates seven vessels carrying freight between the ports of Philadelphia, Pennsylvania, and Houston, Texas (R. 292, 669–670). On June 11, 1937, International Seamen's Union of America, affiliated with the American Federation of Labor, filed with the Board a petition requesting an investigation and certification of representatives for the unlicensed personnel of petitioner and other steamship companies, pursuant to Section 9 (c) of the National Labor Relations Act. After a hearing in which it appeared that both the International Seamen's Union and the National Maritime Union of America, affiliated with the C. I. O. (hereinafter sometimes called the Union), claimed to represent a majority of these employees, the Board on July 16, 1937, ordered that an election be held (R. 19, 671; see *In the Matter of American France Line et al.*, 3 N. L. R. B. 64). An election was thereupon conducted by the Board's regional director on the seven vessels owned by petitioner (R. 759–761). The report of the regional director, issued on January 3, 1938, showed that of 134 eligible voters, 73 voted for National Maritime Union, 4 for International Seamen's Union, and 51 for neither (R. 761).

Because of the refusal of the labor organizations named on the ballot to consent to the presence of a representative of the petitioner at the balloting,

the Board did not permit petitioner to have its representative present at the balloting conducted on the first of the seven vessels, namely, the S. S. *City of Houston,* which took place on October 13, 1937 (R. 763). Thereafter, in respect to the balloting which took place at later dates on the remaining six ships, the labor organizations withdrew their objections to the presence of petitioner's representatives at the election and petitioner's representatives were permitted to be present (R. 673). Petitioner filed objections to the election and to the Regional Director's report on the ballot, alleging that such election should be declared null and void because its representative was excluded from the balloting on the S. S. *City of Houston* (R. 76–78, 762–764). On January 26, 1938, the Board dismissed petitioner's objections and certified the Union as the exclusive representative of all employees of petitioner within the appropriate unit (R. 671–674).

Subsequently the Union filed charges that the company had refused to bargain with it, had terminated the employment of a number of employees because of their membership in and activity on behalf of the Union, and had thereby violated Sections 8 (1), (3), and (5) of the Act (R. 60–63). The Board issued a complaint (R. 63–67), held a hearing, and made findings in which it held these charges to be substantiated (R. 14–39). The per-

tinent facts as found by the Board and as disclosed by the evidence are as follows:

The refusal to bargain.—After the Board's certification of January 26, 1938, the Union made futile efforts to get petitioner to bargain with it. Shortly after the issuance of the certification the Union representatives in Houston and in Philadelphia requested a collective bargaining conference (R. 21, 590–592, 92–94). The representative in Houston was informed that the matter would be transmitted to Philadelphia; the representative at Philadelphia was informed by Sherry, the Marine Superintendent, that the matter was in the hands of petitioner's attorneys (*ibid.*). No further communications being received in answer to these requests, the representative in Philadelphia wrote Sherry (R. 21, 94, 112, 117), unsuccessfully sought to reach him by telephone several times in February and March (R. 21, 96–97), and finally called at his office but was refused permission to enter (R. 22, 97–99). Finally, on August 23, 1938, seven months after the certification and a month after the strike of July 18, to be discussed below, and after another letter to the company (R. 22, 675), the company replied that until the dispute arising out of the election was settled by the Board and the courts, the question of an agreement with the Union "is premature" (R. 22, 676). Sherry testified that this had been the company's position since the date of the certification on January 26

(R. 22, 543–545).[1] On the basis of these facts the Board found that since on or about January 26, 1938, the petitioner had refused to bargain collectively with the Union and that it had thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act (R. 22).

The strikes of July 18 and July 25, 1938, and the subsequent discharges.—On June 30, 1938, the crew of the S. S. *City of Fort Worth* signed on shipping articles at Philadelphia, Pennsylvania, for a voyage to such southern coastwise ports as the master should direct and back to Philadelphia, for a term not exceeding six months (R. 681–683). The shipping articles provided that (R. 681)—

> the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, * * * in everything relating to the vessel * * * whether on board, in boats, or on shore.

The ship sailed on July 1 with a crew of 27 seamen, 19 of them unlicensed personnel (R. 127, 318, 683). On Thursday, July 14, the ship docked at Houston, Texas, and was "tied right up against the dock" so that persons could walk directly from

---

[1] The basis of the company's objection was the refusal of the Board to permit the company's representative to be present at the election conducted on the S. S. *City of Houston* (R. 114).

the ship onto the dock (R. 128, 137, 144–147). The petitioner's Houston office building was immediately adjacent (R. 146). The ship was scheduled to remain in port several days discharging the cargo brought from Philadelphia and taking on cargo for the return trip (R. 142, 170–171, 292–293, 432, 483, 670). The actual unloading and loading of cargo was performed by stevedores (R. 132, 142, 269–270, 670).

During the stay of the ship at Houston the crew continued to live on board just as during a trip at sea, sleeping in their bunk rooms and eating in the mess hall (R. 326, 405). They performed eight hours of "general ship work" a day and otherwise were free to enjoy themselves as they saw fit in their bunk rooms or on the poop deck, or, with the permission of the ship's officers, to go on shore (R. 143, 222, 239, 269, 272, 325, 452, 513).[2]

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[2] The duties during the stay in port of the five persons discharged were as follows: Smith was a mess boy and as such performed the same duties as when the ship was at sea, serving meals, washing dishes, making beds, and cleaning the mess hall and bunk rooms (R. 205–207, 407–409, 423–425, 427, 683). Tracey and Ferguson were firemen and oilers (R. 122, 131, 134, 177, 683). They were supposed to provide the steam necessary for the sanitary and safety appliances and for operating the winches used in loading cargo; also to keep the winches greased and oiled (R. 131–132, 182, 352). Pfuhl and Warren were able seamen, and while the ship was in port engaged in such duties as painting the smokestack or sides of the ship, cleaning the pilot house, and other odd jobs (R. 213, 269, 271, 272, 280, 301, 683).

On Saturday, July 16, some members of the crew went to the Union hall at Houston and arranged for a meeting to be held on Sunday, July 17, between the Union members of the crew and Union representatives in Houston for the purpose of ascertaining what progress the Union had made towards securing collective bargaining with petitioner (R. 593–594). When the crew learned at the meeting on Sunday, July 17, that, despite the Union's certification by the Board almost six months before, the petitioner still refused to recognize it, they voted to call a strike at eight a. m. the next morning for the purpose of inducing petitioner to recognize and bargain with the Union and issue boarding passes to its shore delegates (R. 128–131, 179–181, 241, 593–596).[3] At the meeting it was agreed that the men would keep watch "to see that there was no fire or anything," would permit the stewards' department to operate, and would at all times maintain and furnish sufficient steam to operate all of the ship's sanitary and safety devices, but not for operating the winches for loading cargo (R. 130–131, 595–596).

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[3] The company conceded that the issuance of passes to union delegates would have signalized recognition of the Union (R. 541–542). Petitioner has raised no issue with respect to the inclusion by the strikers of this demand. Cf. *National Labor Relations Board* v. *Cities Service Oil Co.*, 122 F. (2d) 149 (C. C. A. 2).

About eight a. m. on Monday, July 18, while the vessel was still moored to the dock, the strike began when Tracey, the fireman and oiler on the four a. m. to eight a. m. shift and the Union delegate for the engine room, failed to turn the steam "on deck" for the purpose of loading cargo (R. 126, 128, 131–132, 180–181, 197, 219, 269). The first assistant engineer, Pool (or Paul), inquired of Tracey as to why there was no steam on deck and was told that the ship's unlicensed personnel was on strike for Union recognition (R. 132). Pool stated that he would put the steam on deck himself, whereupon Tracey replied, "Well, if you do, I will have to take the fireman out of the fireroom" (R. 132). When Pool turned the steam on, Tracey called upon the fireman on duty, Braun, a member of the Union, to join the strike, which he did (R. 133). At this point Ferguson appeared to relieve Braun whose watch had terminated (R. 134). Tracey told Ferguson that the strike had begun, so Ferguson refused to fire but remained present "to see that the steam wouldn't get too low so that the auxiliaries wouldn't stop" (R. 182). About 8:15 or 8:25 the second assistant engineer, Robinson, came in to fire up enough steam for the cargo loading, and told Ferguson, "Go on up, I will take care of things down here" (R. 134, 182, 355–356, 380–382). Tracey and Ferguson, after securing the express statement of Robinson that he would be responsible for maintaining the steam for

the safety and sanitary devices, left the engine room and joined the eleven other strikers who were seated on the poop deck, the general place of meeting and recreation for the seamen when off duty (R. 134–137, 182, 270–272, 355–356, 500). The ship's officers, together with the assistance of the six unlicensed seamen who did not participate in the strike, then proceeded with the necessary operations for the loading of cargo (R. 317–319, 355–356, 381–382). The strikers did not make the slightest attempt to interfere with any of the normal operations on shipboard performed by the officers and nonstriking members of the crew (R. 290–292, 293, 323–324, 375, 387–388, 404, 499–502). All the men did was merely to sit on the poop deck (R. 135–137, 241, 242, 290–291, 387–388, 500, 501–502).

The captain not being on board at the time (R. 431–432), the chief mate, Helland, who was in charge of the ship during the captain's absence, at once went to the poop deck to inquire what the trouble was (R. 268–272, 286–288). Warren, the Union delegate for the deck section, acting as spokesman for the men, complained that "the company had not been fair to them in regards to the election they had, they had won out, but the company didn't pay no attention to it" (R. 127, 268–272, 286–288). Warren stated that the Union representatives were on the docks, that Helland should go down and talk to them, that the men

were not going to work until the petitioner recognized the Union (R. 139, 268–272, 286–288).

When the ship's captain, Rudan, came on board, about 10:30 a. m., he tried to persuade the strikers that their conduct was unfair to him (R. 165–166, 219–220). The strikers, however, assured him that their action "was not taken against any officer of the ship, it was strictly against the company, we were striking for union recognition" (R. 219–220, 209–210, 165–169, 433, 483). Captain Rudan then advised the men that their conduct was in violation of the ship's articles which they had signed, and ordered them, individually and collectively, to resume their respective duties (R. 138, 165–166, 273–274, 382–383, 431–435). The strikers refused, asserting that the articles would not bar their refusal to work where the company had "done something that was wrong" by refusing to bargain and that they had a right to strike when the ship was safely moored in an American port (R. 483, 162, 219–220, 434–435, 440). Captain Rudan then brought aboard a deputy United States Shipping Commissioner who, reading from the shipping articles, advised the strikers that according to their articles they had agreed "to be obedient to the lawful commands of the master," and warned them that they were "subject to being logged two days for one" for not obeying orders (R. 437–440, 681).

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The men, nevertheless, persisted in their strike and throughout the day remained seated on the poop deck in an orderly manner (R. 137, 241, 242, 290–291, 375, 387–388, 499–502). They did not interfere with the work performed by the other members of the crew or the stevedores (R. 404). At no time were they ordered to leave the vessel (R. 325, 404, 513). Indeed, the permission of the master was sought and obtained before any of them left to go on the dock (R. 143, 513). At noontime the messboy, Smith, resumed his duties, and the twelve other strikers, with the captain's permission, joined the rest of the crew in the dining room where Smith served all the crew, both strikers and non-strikers, their dinner (R. 203, 206–207, 423–425).[4] After dinner the strikers returned to the poop deck (R. 137, 242). It was admitted by an officer that their refusal to work in no way endangered the safety of the ship (R. 387).

Union representatives were present on the dock throughout the day ready to negotiate with any of the petitioner's representatives, as the strikers repeatedly pointed out to the ship's officials (R. 137, 139, 147, 242–243, 272, 287, 589, 603–605).

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[4] While Smith regarded himself as a striker (R. 198), the extent to which he failed to perform his normal duties appears to have been slight. He had served breakfast and cleaned up the breakfast dishes before he joined the strikers on the poop deck (R. 203, 205–206). He served dinner to the whole crew (R. 423–424). Apparently his only omission was the failure to make up three cabins (R. 206, 427–429).

Late that afternoon, petitioner's local attorney, after telephoning petitioner's marine superintendent in Philadelphia (R. 515, 538–540, 640–642), advised the Union's attorney that if the strike were called off he would recommend to petitioner that passes be issued to the shore delegates to board petitioner's ships (R. 616–618, 642–643). Thereupon, Captain Rudan, after conferring with the petitioner's local agent and the shore delegates, gave the strikers permission to leave the ship for the purpose of conferring with their shore delegates upon the dock in order to see if the strike could be ended (R. 142–147, 242–243, 450–452, 489–490, 513). Relying upon the assurances given the Union attorney by petitioner's attorney, the strikers decided to return to work at once (R. 142–147, 620–621).[5] The strike ended at seven p. m. on the same day when the employees all went back to work (R. 147–149, 274–275, 490). The loading of the cargo had not been delayed by the strike and at nine p. m. that night the ship sailed on schedule (R. 147–149, 275, 292–293, 483).

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[5] One of the seamen stated: "He said everything was all right, he said our lawyer and their lawyer is going to get together, and by the time we get back to Philadelphia, everything will be straightened out, we will have passes for our delegates aboard by the time we reach Philadelphia, and by no means no one will be discharged when they got there" (R. 147).

All members of the crew, including the strikers, performed their duties on the voyage back to Philadelphia in a competent manner (R. 375–377, 388, 502). However, when the vessel docked at Philadelphia on July 25, 1938, and the crew signed off their shipping articles, five of the employees who engaged in the strike, namely, Warren, the Union delegate of the deck section; Tracey, the Union delegate of the engine section; Smith, the Union delegate of the steward section; Ferguson and Pfuhl, were discharged because of their participation in the strike (R. 126–127, 151–155, 185–186, 195, 201–202, 223–225, 284, 289–290, 298, 338, 391, 394, 493–494, 520–521, 533–534).

During the voyage home the Union members, anticipating the possibility that some might be discharged, had agreed that all would strike if any were let out by the company (R. 150–151, 185, 244). As a consequence of the discharge of the five men above referred to, when the ship docked in Philadelphia on July 25th all of the remaining Union members but one struck in protest[6] (R. 26, 156–158, 202, 226, 245, 248–249, 252–256, 390.

On the basis of the above facts the Board found that the strike in Houston was caused by the petitioner's refusal to bargain with the Union (R. 25), and that accordingly the discharge of the five sea-

[6] One of these men was subsequently reinstated (R. 136, 253–254, 340–341).

men because of their participation in such strike was unlawful (R. 31); and that the strike in Philadelphia was likewise attributable to petitioner's unfair labor practices since brought on by the discharge of the five men referred to (R. 26). The Board further found that petitioner's entire course of conduct had interfered with the employees' exercise of the rights guaranteed by Section 7, in violation of Section 8 (1) of the Act (R. 40).

The Board's order required petitioner to cease and desist from its unfair labor practices, to bargain collectively with the Union upon request, to offer reinstatement with back pay to the five seamen whose discharge violated Section 8 (3) and (1), to offer reinstatement upon application to the seamen who went on strike on July 25, and to post appropriate notices (R. 40–44).

Thereafter, petitioner filed in the court below its petition to review and set aside the Board's order and the Board answered requesting enforcement (R. 1–13, 45–52). The case was argued on October 8, 1940, before three judges (R. 767–768); on February 7, 1941, the case was restored to the argument list for rehearing before the court *en banc* (R. 768–769). On May 6, 1941, the court below handed down its opinion directing enforcement of the Board's order with a modification not here material, Judge Clark dissenting (R. 769–780). The court's decree was entered on May 20, 1941 (R. 786–789).

SUMMARY OF ARGUMENT

I

A. Since the discharges resulted from a strike brought on by petitioner's refusal to bargain, an unfair labor practice, there would clearly have been a violation of the National Labor Relations Act if the strike had occurred on land. The fact that the crew remained on the vessel, even though in a sitting position, instead of deserting, does not render their conduct unlawful. Since the men were not ordered to leave the ship and there was no illegal seizure of property or force or violence, but merely a use of the quarters available to the men, the doctrine of the *Fansteel* case does not apply.

B. 1. Nor does the fact that the strike involved the refusal of seamen on a ship to obey orders of the master in the present circumstances justify the discharges or preclude the Board from ordering reinstatement. An examination of the history of legislation relating to seamen manifests a congressional understanding that a peaceful strike for the purpose of compelling an employer to obey the law while a vessel is in a safe position in an American port is not unlawful. The cases are consistent with this view. The considerations underlying the requirement of strict discipline for seamen do not apply in such a situation.

2. Even if the strikers' conduct constituted a technical or minor violation of the law the Board would have the power to order reinstatement. The *Fansteel* decision has properly not been regarded as holding that all unlawful conduct, however trivial and however provoked by the employer, forfeits an employee's rights under the Labor Relations Act.

C. Nor does the fact that the seamen signed shipping articles requiring them to obey their officers mean that the strike was unlawful. Such a provision, required by law for seamen, is implicit in any contract of employment and does not constitute an agreement not to strike. In any event, by continuing to employ the men after the strike, petitioner waived the alleged breach of contract by them.

II

Petitioner's contention that the employment relationship terminated upon the signing off of articles at the conclusion of the voyage is unsound. The Board's finding that the tenure of employment continued is amply supported. *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206. Even if the employment relationship terminated, the failure to rehire the men nevertheless was discriminatory and, therefore, an unfair labor practice. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177.

III

Petitioner had no right to have a representative present at the election conducted by the Board among the seamen. Accordingly its refusal to recognize the certification and bargain with the union certified was unjustified and unlawful.

ARGUMENT

I

THE DISCHARGE OF SEAMEN BECAUSE THEY ENGAGED IN A PEACEFUL STRIKE ON A SHIP MOORED SAFELY IN A DOMESTIC PORT FOR THE PURPOSE OF INDUCING THEIR EMPLOYER TO COMPLY WITH THE NATIONAL LABOR RELATIONS ACT IS AN UNFAIR LABOR PRACTICE WITHIN THE MEANING OF THAT ACT

A. THE BOARD'S ORDER WOULD HAVE BEEN PROPER IF A SIMILAR STRIKE HAD OCCURRED ON SHORE

Petitioner's brief has not denied that it has refused to bargain with the Union, that the strike in Houston was brought on by its refusal to bargain, or that the discharges resulted from the strike.[7] Nor can there be doubt that the Union

[7] Petitioner apparently has abandoned the contentions made before the Board, but unsupported by the record, that the seamen were discharged for other reasons than their participation in the strike. Petitioner still contends, however (Br., pp. 27–32), that the seamen were not "discharged," but that their employment terminated automatically with the expiration of the shipping articles at the end of the voyage. See pp. 62–64, *infra*.

represented the majority of the employees,[8] or that the refusal to bargain was an unfair labor practice. These facts are established by the record beyond the possibility of contradiction.

Petitioner does not dispute the well-established proposition that when a strike is caused by an unfair labor practice, the Board may require the reinstatement of employees discharged because of their participation in the strike. *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2), certiorari denied, 304 U. S. 576, 585; *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. (2d) 167 (C. C. A. 3), certiorari denied, 308 U. S. 605; *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. (2d) 472 (C. C. A. 3), certiorari denied on this point, 310 U. S. 655; *Black Diamond S. S. Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2), certiorari denied, 304 U. S. 579; *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179 (C. C. A. 6); *M. H. Ritzwoller Co.* v. *National Labor Relations Board*, 114 F. (2d) 432, 437 (C. C. A. 7). Indeed, in *National Labor Relations Board* v. *Mackay Radio & Tel. Corp.*, 304 U. S. 333, this Court held that, under Section

[8] Petitioner has attacked the validity of the certification on technical grounds but does not deny that a majority of its unlicensed personnel desired the Union to represent them (see pp. 64–68, *infra*).

2 (3),[9] the protection of the Act was available even to persons who had struck for other reasons.

Petitioner argues (Br. p. 15), however, that the strike in this case was a "sit-down," and that accordingly *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, is applicable.

Apart from the fact that the strikes in each case have loosely been characterized as "sit-downs," this case differs radically from the *Fansteel* case. The *Fansteel* opinion shows that the Court was not concerned with any mere "sitting-down," but with the illegal seizure and retention of the plant by force and violence and the refusal of the strikers to permit the owner to enter its property or to vacate the premises after they were discharged.[10]

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[9] Section 2 (3) reads, in part, as follows:

"When used in this Act— * * *

"(3) the term 'employee' shall include * * * any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice * * *."

[10] Examination of the *Fansteel* opinion shows that the Court never described the strikers' conduct as "sitting down," but as "the seizure and retention of respondent's property" (306 U. S., at 252); illegally taking and holding possession of respondent's property (*ibid.*); "the seizure and holding of the buildings" (*id.*, at 253); the "ousting of the owner from lawful possession" (*ibid.*); "resort to force" (*ibid.*); "the seizure and holding of its buildings" (*id.*, at 254); "seizing or committing depredations upon the property of their employer" (*ibid.*); "acts of trespass or violence against the employer's property" (*id.*, at 255); "illegal seizure of the buildings" (*id.*, at 256); "resort to force and violence" (*id.*, at 258); "seizure of the plant" (*id.*, at 259).

Peninsular & Occidental S. S. Co. v. *National Labor Relations Board,* 98 F. (2d) 411 (C. C. A. 5), certiorari denied, 305 U. S. 653, upon which petitioner also relies (Br. p. 19), involved, the court thought, the seizure of property, a vessel, by strikers who did not merely sit down, but "took possession of the ship" and "contemplated * * * sabotage" (98 F. (2d), at 413).[11]

Here the striking seamen did not seize or take or retain possession of anything, or interfere with the operation of the ship by other persons; they merely remained in the quarters assigned to them and refused to work. Petitioner did not discharge them or order them to leave the vessel. Indeed, petitioner inferentially conceded that the conduct of the strikers was less serious because they did not leave the ship thereby becoming deserters.[12]

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[11] It is unlawful, of course, for the men to remain on board against the will of the owners. The cases of *The Oakmar*, 20 F. Supp. 650 (D. C. Md., 1937), and *The Losmar*, 20 F. Supp. 887 (D. C. Md., 1937), cited by petitioner (Br., pp. 20–21) upheld the right of the owner of ships to recover the ships by possessory libels where the seamen refused to vacate. The National Labor Relations Board held that the owner of *The Oakmar* and *The Losmar* was justified in discharging the employees who refused to vacate those ships and that such a discharge did not constitute an unfair labor practice. *In the Matter of Calmar Steamship Corporation*, 18 N. L. R. B. 1.

[12] See Transcript of oral argument before the Board, pp. 41–42, and R. 30n. For the strikers to have left the ship would have constituted desertion, punishable by forfeiture of wages already earned and clothing and effects remaining on board (46 U. S. C., Sec. 701).

It would indeed be anomalous to hold that striking seamen who avoided the statutory offense of desertion by remaining on board the vessel in accordance with the obvious desire of the master were by reason of that very fact guilty of an unlawful "sit-down".

The ship, of course, was the home of the sailors, even when in port, as petitioner's officers admitted (R. 326, 405); the master agreed (R. 500) that the poop deck, upon which the strikers sat, was the normal gathering place for the men when off duty. A comparable situation ashore, which would obviously not be deemed unlawful, would arise if striking lumbermen living in company-owned facilities remained peaceably in or just outside of their bunkhouses, even if they spent most of the time sitting. There would not even be a technical trespass until and unless the company ordered them to leave.

National Labor Relations Board v. *American Mfg. Co.*, 106 F. (2d) 61 (C. C. A. 2), affirmed 309 U. S. 629, is closely in point. The Circuit Court of Appeals there stated (p. 68):

> We do not regard the action of these or other employees in standing around the premises for a period of not more than two hours, while an attempt was being made to persuade the Company to fix a date for collective bargaining with T. W. O. C., as in the nature of a sit-down strike which would permit the termination of the em-

ployee relationship. They certainly were not claiming to hold the premises in defiance of the right of possession of the owner and we regard the case as no different from that of an ordinary strike where work has ceased because of an unfair labor practice.

B. THE FACT THAT THE STRIKE INVOLVED THE REFUSAL OF SEAMEN ABOARD SHIP TO OBEY ORDERS OF THE MASTER DID NOT, IN THE PRESENT CIRCUMSTANCES, JUSTIFY THE DISCHARGES OR PRECLUDE THE BOARD FROM ORDERING REINSTATEMENT

Petitioner's argument stresses the fact that the strike involved the refusal of seamen aboard a ship to obey orders of their superiors.

It is not claimed that anything in the National Labor Relations Act places seamen in a different category from other employees. The Act has frequently been applied to them. *E. g., National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206; *Black Diamond S. S. Corp.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2), certiorari denied, 304 U. S. 579. Indeed, the Merchant Marine Act, 1936, as amended in 1938, expressly ratified the application of the Labor Relations Act to seamen (52 Stat. 965, 46 U. S. C., Sec. 1252, Appendix, *infra*, pp. 81–82).

Petitioner's contention is that because of the necessity for discipline and obedience to the master's commands in order to insure the safety of the ship, disobedience is under all circumstances unlawful and a discharge for such disobedience per-

missible.[13] It is claimed that because the need for obedience exists when a ship is at sea or is not in a safe position in port, the authority of the master must always be recognized, both as a matter of general disciplinary policy and because of the difficulty of determining when a ship is in a safe position.[14] The fact that the employees' disobedience consisted of a peaceful strike brought on for the purpose of inducing petitioner to obey the law, while the ship was tied to the dock and in no

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[13] Petitioner (Br. p. 25) states that the Department of Commerce "considers lack of discipline the main cause of unsafety" of American vessels, citing a Maritime Commission Survey of the Merchant Marine. This report, however, shows that unsatisfactory labor relations in the maritime industry, just the same as those on land, arise from suppression of the right to organize and bargain collectively and that the solution is not penalization of workers who seek to achieve these rights but insistence that employers accord them. House Doc. No. 392, 75th Cong., 2d Sess., United States Maritime Commission, *Economic Survey of the American Merchant Marine* (November 10, 1937), pp. 46–49.

[14] It does not follow, of course, that lack of discipline at sea will result from the assertion by seamen of their rights while they are in port. Seamen's unions themselves have explicitly recognized this. A pamphlet published by the C. I. O. Maritime Committee and the National Maritime Union of America, dealing with safety at sea, states:

"Maritime workers, no less than shipowners, subscribe wholeheartedly to the tradition that when a vessel is under way or is not in a safe harbor, the seaman must obey the orders of his superior. No seaman questions this. He has a greater interest in safety-at-sea than the shipowner. The operator has nothing to lose but a ship; the seaman has his life." (The C. I. O. Maritime Committee and the National

way in danger, is apparently not thought by petitioner to be material.

The Government's position is (1) that in the circumstances of this case the strikers' conduct was not illegal, and (2) that even if in a technical sense it were, the strikers would not have forfeited their right to reinstatement under the National Labor Relations Act.

1. In the circumstances of this case the strikers' conduct was not illegal

Petitioner's argument that the strikers' conduct was illegal seems to rely mainly on cases under the statute prohibiting revolts and mutiny (4 Stat. 775,

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Maritime Union of America, *Who's Guilty?* (May 1940) p. 24.)

The position of the United States at a conference of the International Labor Office at Geneva in 1920 has been described as follows:

"The requirements of the sea service make it necessary that more stringent disciplinary measures be applied to seamen at sea than to men in other classes of industry. A distinction should be made between the service of seamen while at sea and while in a safe harbor. In the former case suitable penalties should be provided to enforce obedience and the efficient performance of their duties by seamen, but while in a safe harbor seamen should be subject to only such civil liabilities as those to which other classes of workmen are subject." (*Laws and Agreements Governing Working Conditions Among American Seamen*, Monthly Labor Review, Vol. 10, pp. 1075, 1094 (May 1920), Government Printing Office.)

See Hohman, *Maritime Labour in the United States*, International Labour Review, Vol. 38, pp. 190, 199 (International Labor Office, Geneva, August 1938).

18 U. S. C., Secs. 483, 484, Appendix, *infra*, pp. 72–73). The applicability of this and related laws to the instant case may best be determined by an examination of the history of legislation in this field.

(a) *The course of legislation.*—The first statute punishing mutiny was the Act of April 30, 1790, c. 9, 1 Stat. 112–115. Section 8 of that Act provided that every mariner who "shall make a revolt in the ship" shall be deemed "a pirate and felon", punishable by death. Section 12 provided that any seaman who "shall confine the master * * *, or endeavour to make a revolt" shall be subject to three years' imprisonment.

These provisions were replaced by Sections 1 and 2 of the Act of March 3, 1835, 4 Stat. 775–776, which have since been reenacted in the Revised Statutes of 1878,[15] and as Sections 293 and 292 of the Criminal Code of 1909[16] without substantial change, and are still in effect (18 U. S. C., Secs. 484, 483). Since the first compilation of 1878 these sections have borne the titles "Revolt or Mutiny on Shipboard" and "Inciting Revolt or Mutiny on Shipboard." They read as follows:

> § 484. REVOLT OR MUTINY ON SHIPBOARD. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and

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[15] Rev. Stat. 5360, 5359.

[16] Sections 293, 292 (35 Stat. 1146).

maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than $2,000 and imprisoned not more than ten years.

§ 483. INCITING REVOLT OR MUTINY ON SHIPBOARD. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than $1,000, or imprisoned not more than five years or both.

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In the debate in the Senate on the 1835 Act, Senator Shepley "moved to strike out the words in the bill which authorized punishment to be extended to neglect of duty". Senator Clayton, who reported and explained the bill, "opposed the motion on the ground that it was only designed to apply to conspiracies by the crew to neglect their duties, *so as to endanger the safety of the ship and crew*" (2 Cong. Globe 265). [Italics supplied.] The motion was defeated and the bill passed without change (*id.*, at 276, 298).

The next pertinent statute dealing with the conduct of seamen was the Act of June 7, 1872, c. 322, 17 Stat. 262, 273, which was entitled, *inter alia*, an Act "for the further Protection of Seamen". Section 51 of this law, which became Section 4596 of the Revised Statutes of 1878, Appendix, *infra*, pp. 73–75, made liable to punishment seamen who engaged in any of nine specified offenses. These included "first, * * * desertion", which was punishable by imprisonment up to three months; "fourthly, * * * willful disobedience to any lawful commands", punishable by imprisonment up to two months; "fifthly, * * * continued willful disobedience to lawful commands, or continued willful neglect of duty", punishable by imprisonment up to six months; and "seventhly, for combining with any other or others of the crew to disobey lawful commands or to neglect duty * * *", which was punishable by imprisonment

up to twelve months. Forfeiture of wages and the payment of civil penalties were also prescribed for these offenses.

The seventh clause quoted might have been construed to prohibit strikes by seamen, as a combination to disobey lawful commands. This clause was repealed by the Act of December 21, 1898, 30 Stat. 755, 760–761, and the words "at sea" were inserted in the fourth and fifth clauses prohibiting willful disobedience. See Appendix, *infra*, pp. 75–78. The penalties were also lessened. The effect of these changes was completely to eliminate the clause which might have prohibited all strikes and to limit the prohibition against willful disobedience to situations at sea—when, of course, the safety of the vessel might be endangered. Presumably strikes at sea would still constitute willful disobedience, within the meaning of the fourth and fifth clauses as amended.

That it was the purpose of the 1898 law to give seamen the same rights as workers on land, except when considerations of safety prevented, appears from the explanation of the bill by its sponsors on the floor of the House. Representative Payne, who was in charge of the predecessor to the bill which became law in the following Congress, stated that "the committee have stricken out of the bill every vestige of imprisonment for violating a civil contract" (28 Cong. Rec. 6286). Representative McGuire, who had introduced the

original bill, stated that the bill "is a great advance over existing laws" in according to sailors the "rights that are common to American citizens in all other trades, callings, and occupations under the American flag," and that the bill "proceeds upon the principle that the sailors in our merchant-marine service should, in their personal rights, be placed upon equality with American citizens engaged in other industrial disputes" (28 Cong. Rec. 6288).

The discussion in the committee report (H. Rep. 1657, 55th Cong., 2d Sess.) with respect to the proposed changes in the penalties for desertion,[17] also throws light upon the congressional understanding as to the right of seamen to strike. The report states (p. 4):

> * * * Section 20 (4596, R. S.): The bill itself was a great change from the present law in that it left all imprisonment for desertion in the discretion of the court, instead of absolute as now. But your committee have gone further to relieve the maritime laws of their strictness, and have eliminated by their amendment all imprisonment for a violation of civil contract. They are not unmindful of the inconvenience and loss

[17] The bill as reported to the House abolished imprisonment as a penalty for desertion; the Act as passed eliminated this penalty for desertion only in American ports, and merely reduced the penalty for desertion in foreign ports. See 32 Cong. Rec. 129–132. The 1915 Act (*infra*, p. 31) eliminated the criminal penalty entirely.

> that may occur to the vessel by reason of the seaman's disregard of the obligations of his agreement. In the case of employers on railroads great inconvenience and loss *often follow a strike,* but no one proposes imprisonment as a remedy. [Italics supplied.]

The laws relating to seamen, including R. S. 4596, were again revised in the LaFollette Act of March 4, 1915, 38 Stat. 1164, 1166 (Appendix, *infra,* pp. 78–80), but no change material here was made in the specific provisions referred to above;[18] although reenacted, they have remained in substantially their 1898 form up to the present time (46 U. S. C., Sec. 701).

The object of the 1915 Act was to ameliorate the conditions of seamen. The report of the House committee is a definite manifestation of what Congress thought the legislation for the benefit of seamen had accomplished, and of what Congress assumed the rights of seamen in port to be. The report[19] states (H. Rep. 645, 62d Cong., 2d Sess., pp. 6–7):

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[18] The change in the penalty for desertion is described in Note 17, *supra.*

[19] The bill which was finally passed in 1915 during the 63d Congress was first introduced and reported in the 62d Congress, and the House Report quoted was submitted to the earlier Congress in 1912. No relevant changes were made in these provisions of the bill before final enactment. Language identical with that in the quoted passages from the report also appears in a letter from the Secretaries of Commerce and Labor to the Chairman of the Committee on Commerce

* * * In the judgment of your committee this bill will be more far-reaching than any measure now pending in Congress. There is no other portion of our citizens or residents who can be compelled, under penalty of imprisonment, to fulfill a civil contract to labor. The seamen alone remain as the last remnant of serfdom. The seaman may be, and is, compelled to sign a contract to labor before he can secure employment, and to fulfill such contract after he has signed it, and the inevitable result has followed, that the self-respecting man or boy prefers employment on land to that of employment at sea, and only those accept a

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of the Senate recommending that the same bill as reintroduced in the 63d Congress be passed (Sen. Doc. No. 211, 63d Cong., 1st Sess.). The House report in the 63d Congress (H. Rep. 852, 63d Cong., 2d Sess.), after referring both to the Democratic and Republican 1912 platforms, declared (p. 25): "Enlightened public sentiment of the present age is opposed to the arrest and imprisonment of any person, without reference to his occupation, for violation of his civil contract of employment. * * * While it has been urged with great force by the shipping interests that the repeal of the laws and treaties providing for the arrest and imprisonment of deserting seamen will lead to serious disorder and inconvenience, and will seriously handicap them in securing efficient crews for their vessels, this question has been agitated for many years, and all the arguments for and against it have been carefully weighed by the committee, and the committee is unanimous in its opinion that such laws and treaties should be repealed. It might be well to state that such laws, as they apply to our coastwise vessels, were repealed many years ago, and no serious consequence has been shown to have resulted therefrom."

seafaring life who by propinquity or necessity are compelled to do so.

* * * * *

This bill relieves him from that condition. By relieving the seaman from any criminal proceeding for violating a contract to labor, leaving only the civil process as a remedy, *you place him exactly in the same position as other workmen,* and the result will be to gradually improve the standard of the men who go down to the sea, not only of those in our own shipping, but of those in all ships entering our ports, until it has reached the same standard as that of workmen on land.

* * * * *

* * * Under existing laws men may be and are employed at the ports where the lowest standard of living and wages obtain. The wages in foreign ports are lower than they are in the ports of the United States; hence the operating expenses of a foreign vessel are lower than the operating expenses of an American vessel. It is not proposed to prevent vessels from employing seamen in ports where they can secure them cheapest, *but it is proposed by this bill to give the seamen the right to leave the ship when in a safe harbor,* and in time this will result in foreign seamen engaged on vessels coming into ports of the United States being paid the same wages as obtain here, as a means of retaining their crews for the return voyage. That will equalize the cost of

> operation, so that vessels of the United States will not be placed at a disadvantage. [Italics supplied.]

Most significantly, the report summarized Section 6 of the proposed bill, which was the reenactment of R. S. 4596 as amended, as follows (p. 8):

> *Section 6 amends existing law so as to give the seaman the same freedom as landsmen when his vessel is in a safe harbor and to enforce proper discipline while at sea.* [Italics supplied.]

At the same session Congress enacted Section 20 of the Clayton Act (38 Stat. 730, 738, 29 U. S. C., Sec. 52, Appendix, *infra*, pp. 80–81). That section provides:

> And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; * * * *nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.* [Italics supplied.]

The latter provision this Court has recently declared to be a "catch-all" to relieve the practices previously described in Section 20 from "all illegal taint" (*United States* v. *Hutcheson*, 312 U. S. 219, 230). The "public policy of the United States"

for which the Clayton Act stands has been reaffirmed by Congress both in the Norris-LaGuardia Act of March 23, 1932, 47 Stat. 70 (29 U. S. C., Secs. 101–115) [20] and in the National Labor Relations Act itself.

Finally, we believe it of some relevance that in June 1938 Congress added to the Merchant Marine Act, 1936 (49 Stat. 1985), the title on maritime labor relations, the policy of which was to encourage collective bargaining, which expressly reaffirmed all obligations created under the National Labor Relations Act (52 Stat. 965, 46 U. S. C., Secs. 1251–1262, Appendix, *infra*, pp. 81–82). The 1938 statute not only required that all disputes between maritime employers and employees be considered in conference between authorized representatives of the parties, but also provided that it should be the duty of employers to set a time for such conferences within five days after the receipt of a request therefor (46 U. S. C., Sec. 1256 (expired June 23, 1941. Pub. No. 124, 77th Cong., 1st Sess.)).

It is clear from this review of the history of the statutes bearing upon this problem that a peaceful strike while a ship is in a safe position at the dock no longer violates any of the clauses in Rev. Stat. 4596, and its successors (46 U. S. C., Sec. 701). That statute, as has been shown, was deliberately amended so as to eliminate the clause punishing combining to disobey commands, and also so as to

[20] Cf. *United States* v. *Hutcheson*, 312 U. S., at 231.

restrict the offense of willful disobedience to conduct at sea.

The only other statute which might be applicable is the mutiny Act of 1835, now Sections 292 and 293 of the Criminal Code (18 U. S. C., secs. 483–484). Insofar as this statute might ever have applied to a peaceful cessation of work in port, it would seem to have been superseded by Section 20 of the Clayton Act.[21] If so, that is conclusive of the issue here.

But even apart from the Clayton Act, we believe that the language of the original statute and the course of legislation show that Congress, over a period of years, has not deemed the mutiny laws to be applicable to offenses of this type. In the first place, even though the words "solicits * * * any other of the crew to disobey * * * or neglect their proper duty"[22] might literally be

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[21] Since the Clayton Act does not differentiate between conduct at sea and on land, it might be deemed applicable to peaceful strikes even when the vessel is not in port. That question, of course, need not be determined in this case. In any event, even if the mutiny acts were held inapplicable to such strikes at sea, Paragraphs Fourth and Fifth of Rev. Stat. 4596, as reenacted in 1915, 38 Stat. 1166 (46 U. S. C., Sec. 701) *after* the Clayton Act (Act of October 15, 1914, 38 Stat. 730, 29 U. S. C., Sec. 52) penalize willful disobedience at sea, and still remain available for the punishment of seamen who disobey, individually or in combination, while not in port.

[22] The Act also applies to one who endeavors or combines to make a revolt or mutiny. These words we believe would have to be stretched considerably to apply to situations like that at bar.

deemed to cover peaceful efforts to persuade others to strike, the 1835 Act, read as a whole, demonstrates that Congress had something much more serious in mind. The emphasis is on revolt and mutiny, as is brought out not only by the text but by the titles given to the sections in the Revised Statutes, the Criminal Code, and the United States Code. These terms are defined in Section 484 (18 U. S. C.) as unlawfully and with force or by fraud or intimidation usurping command of a vessel or resisting officers and depriving them of their authority (*infra,* pp. 72–73). Section 483, which deals with endeavors to mutiny or the incitation of others to do so, must be read in the light of this definition of the primary offense. The meaning to be given the concluding phrases in this section can best be gathered from their context. Cf. *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 568. The maxim *ejusdem generis* also has obvious application.

That the Congress which passed the Act was of this opinion may be inferred from the remark of Senator Clayton that the phrase "neglect of duty" meant only that which "endangers the safety of the ship and crew" (see p. 28, *supra*). Moreover, the expression "solicits, incites, or stirs up * * * to disobey or resist the lawful orders of the master * * * or to refuse or to neglect their proper duty," read as a whole, in itself carries a connotation of threatened disorder, intimidation or violence.

That mere combining to disobey, in the absence of such factors, was not designed to be reached by the 1835 act appears from the provision in the 1872 statute punishing by one year imprisonment, instead of five, "combining * * * to disobey lawful commands or to neglect duty." This provision in the 1872 law would have been entirely unnecessary if the 1835 Act with its heavier penalties applied to the same offenses.[23]

The repeal of this provision in 1898, together with the restriction to conduct "at sea" of the penalties for willful disobedience, manifests a congressional intention that a peaceful combination to disobey in port is not unlawful. In view of the expressed purpose of the framers of the 1898 Act to "improve the condition of the American sailor," and "relieve the maritime laws of their strictness" (H. Rep. 1657, 55th Cong., 2d Sess., p. 4),[24] it would be absurd to conclude that the repeal of the clause had the effect of reinstating a statute penalizing the same conduct five times as severely.

The Acts of 1898 and 1915 were enacted in response to efforts of organized maritime workers

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[23] We do not think that the 1872 Act can properly be deemed to have amended, or limited the effect of, or reduced the penalties under the 1835 enactment. The codifiers have treated the two measures as entirely separate and unrelated, and we think properly so. The legislative history of the 1872 act throws no light upon the problem. Cf. *In Re Simpson* 119 Fed. 620 (D. Maine, 1901).

[24] See, also, S. Rep. 832, 54th Cong., 1st Sess.; 29 Cong. Rec. 548–549; 32 *id.* 129–132.

to secure the same right to strike when in a safe harbor as was enjoyed by workers on land.[25] The proponents of the 1898 and 1915 statutes plainly assumed that, except for the necessity of insuring obedience at sea, they were raising the status of seamen to that of the worker on shore. Their failure to touch or amend the mutiny statute can be explained only on the assumption that they never dreamed that the conduct which they were protecting against relatively minor penalties constituted a felony under laws applicable to "revolt or mutiny."

If the entire course of legislation covering the period from 1835 to 1915 had been compressed into a short period, in which the personnel of Congress had not materially changed, there could be no doubt as to its pertinence to the construction of the 1835 Act. When evidence of congressional intention is derived from legislative action at wide intervals over a period of eighty years, the concept of a personalized and continuing legislative intent is more difficult to sustain.[26] Nevertheless, it is not entirely fictional to treat Con-

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[25] Hohman, *Maritime Labour in the United States*, International Labour Review, vol. 38, pp. 190, 198–207 (International Labor Office, Geneva, August 1938); U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 342, *International Seamen's Union of America: A Study of Its History and Problems*, pp. 4–6, 16–17, 29–39.

[26] See Radin, *Statutory Interpretation*, 43 Harv. L. Rev. 863; Landis, *A Note on "Statutory Interpretation,"* *id.*, 886.

gress, like a court, as a continuing entity, despite changes in personnel, and to determine what its pronouncements mean by looking at them as an integrated whole even over a period of years.

"The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law that all acts *in pari materia* are to be taken together, as if they were one law. * * * and if it can be gathered from a subsequent statute *in pari materia,* what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute." *United States* v. *Freeman,* 3 How. 556, 564; *Cope* v. *Cope,* 137 U. S. 682, 688; *Tiger* v. *Western Investment Co.,* 221 U. S. 286, 309; *United States* v. *Stewart,* 311 U. S. 60, 64. Uncertainties as to the interpretation of the 1835 Act in the light of its contemporaneous history thus may reasonably be resolved by heeding what subsequent Congresses, which might otherwise have amended it, understood it to mean.

In this case, moreover, we need not be primarily concerned with what the 23rd Congress intended in 1835 but with what the 74th Congress intended in 1935. The issue to be decided is whether particular discharges violated the National Labor Relations Act, or, more specifically, whether they

were justified because of the policies proclaimed in earlier legislation. In determining whether the Congress which passed the Labor Relations Act would have deemed discharges justified because of acts which might have violated a law enacted in 1835, we should give effect to what those who passed the Labor Relations Act would have assumed the earlier statute to mean. We believe that there can be no doubt that, at least for the last fifty years, Congress has assumed that the peaceful cessation of work, while a vessel was in a safe position in port and in order to attain a lawful objective, did not come within the purview of the statutes prohibiting mutiny.

(b) *The authorities.*—The petition for certiorari (p. 7) declared that the question here presented had not been settled by this Court, and referred to the statement by the court below that, upon authority, the question was an "open one" (R. 777). We can go further and state that, despite the numerous cases cited in petitioner's brief, there are no authorities involving a precisely similar question.

The essential facts in this case are as follows:

1. The men ceased work in order to induce their employer to obey the law.

2. The strike occurred not merely in an American port, but while the ship was moored to the dock in a safe position, and while the men remained on board and were willing to do anything essential to the safety of the vessel.

3. The strike was entirely peaceful; the men did not seize control of or otherwise interfere with the operation of the ship.

The cases upon which petitioner relies should be examined with these considerations in view.

Although many cases under the mutiny act have applied that statute to ships in port or in a harbor, none have involved vessels moored to the dock or in a definitely safe place in an American port.[27] A ship anchored in a harbor some distance from land is not necessarily safe. The modern decisions involve ships in foreign ports. *Hamilton* v. *United States,* 268 Fed. 15 (C. C. A. 4, 1920), certiorari denied, 254 U. S. 645 (three miles out, in Bermuda); *Rees* v. *United States,* 95 F. (2d) 784 (C. C. A. 4, 1938) (Montevideo); *United States* v. *Albers,* 115 F. (2d) 833 (C. C. A. 2, 1940) (Colombo, India). In the *Hamilton* and *Rees* cases the vessels were not in a safe place in

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[27] The cases involving vessels in American ports are: *United States* v. *Haines*, 26 Fed. Cas. No. 15,275 (C. C. D. Mass., 1818); *United States* v. *Hamilton*, 26 Fed. Cas. No. 15,290 (C. C. D. Mass., 1829); *United States* v. *Gardner*, 25 Fed. Cas. No. 15,188 (C. C. D. Mass., 1829); *United States* v. *Barker*, 24 Fed. Cas. No. 14,516 (C. C. D. Mass., 1829); *United States* v. *Lynch*, 26 Fed. Cas. No. 15,648 (C. C. S. D. N. Y. 1843); *United States* v. *Staley*, 27 Fed. Cas. No. 16,374 (C. C. D. R. I., 1846); *United States* v. *Nye*, 27 Fed. Cas. No. 15,906 (C. C. D. Mass., 1855).

Different considerations may well apply to vessels in foreign ports. Cf. *United States* v. *Roberts*, 27 Fed. Cas. No. 16,173 (C. C. S. D. N. Y., 1843) (Havre, France); *United States* v. *Cassedy*, 25 Fed. Cas. No. 14,745 (C. C. D. Mass., 1837) (St. Helena); and cases cited in text.

the harbor; the position of the ship in the *Albers* case does not appear. In the *Rees* case the Circuit Court of Appeals declared (p. 792):

> The defendants contend that the crew of a vessel which is moored to a dock or is at anchor in a safe harbor have the right to strike and that the Mutiny Act, 18 U. S. C. A., § 483, has no application to seamen in such a situation. But that question is not presented for decision in this case. As we have already pointed out, the *Algic* was not in fact moored to the dock or at anchor in a safe harbor, but was in such a position that the obedience of the crew to the orders of the master was essential to her safety. In such a case, the same rule is applicable as though the vessel were at sea, as this court decided in *Hamilton* v. *United States*, 4 Cir., 268 F. 15.

It is true that a number of the early cases, most of which were decided prior to 1835 and all before 1860, held or assumed that the mutiny act applied to ships in port without any discussion as to whether the vessel was in a safe place.[28] Some of these cases involved violent resistance to the master's orders,[29] but others held that the law was violated by a peaceful refusal to work while a vessel

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[28] See Note 27, *supra*, p. 42.

[29] *United States* v. *Hamilton*, *United States* v. *Roberts*, both *supra*, Note 27; *United States* v. *Stevens*, 27 Fed. Cas. No. 16,394 (C. C. E. D. Pa., 1825) (St. Domingo).

was in a harbor.[30] These cases differ from the instant case, not only in that the vessels involved were not moored to the dock, but in that the court in each deemed the reason for the refusal to work to be illegal. In a number of them the crew refused to work under a different master than was specified in the articles.[31] In another the crew was insisting upon a one-day watch below deck.[32] In others the crew was claiming erroneously that the voyage had terminated and that its obligation to work had expired.[33]

Moreover, the early cases arose before unions for maritime labor were organized and before the right of labor to bargain collectively was recognized by employers or accorded legal protection.[34]

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[30] *United States* v. *Haines*, *United States* v. *Nye*, *United States* v. *Barker*, *United States* v. *Gardner*, all *supra*, Note 27, p. 42; *United States* v. *Cassedy*, 25 Fed. Cas. No. 14,745 (C. C. D. Mass., 1837) (St. Helena); *Hamilton* v. *United States*, 268 Fed. 15 (C. C. A. 4th, 1920), certiorari denied, 254 U. S. 645 (Bermuda).

[31] *United States* v. *Hamilton*, *United States* v. *Haines*, *United States* v. *Nye*, *United States* v. *Cassedy*, all *supra*, Note 27, p. 42.

[32] *United States* v. *Gardner*, *supra*, Note 27, p. 42.

[33] *United States* v. *Barker*, *supra*, Note 27, p. 42; *Hamilton* v. *United States*, *supra*, p. 42.

[34] Paul S. Taylor, *The Sailors' Union of the Pacific* (Ronald Press, 1923), pp. 46–49; United States Department of Labor, Bureau of Labor Statistics, Bulletin No. 342, *International Seamen's Union of America: A Study of its History and Problems* (1923), pp. 3–5.

The only case under the mutiny act which mentions a union is the *Rees* case, decided in 1938 (see pp. 42–43, *supra*), which expressly refrains from passing on the present question.

Indeed, seamen during the nineteenth century were regarded even by this Court "as deficient in that full and intelligent responsibility for their acts which is accredited to ordinary adults * * *" (*Robertson* v. *Baldwin,* 165 U. S. 275, 287).

In none of the cases was the crew seeking to compel the employer to cease disobeying a statutory command, as is the case here. The analogy of the authorities which hold that a crew may rightfully refuse to obey orders if it reasonably believes a vessel to be unseaworthy[35] suggests that the lawfulness of the demand has always been an important factor.

Another group of cases which indicate that strikes when a vessel is safe in port are not illegal have arisen out of attempts by employers to use such strikes as a defense to suits by seamen for wages. Although mutinous conduct works a forfeiture of all wages due,[36] the right of the men to recover in such cases has been upheld. *Weisthoff* v. *American-Hawaiian S. S. Co.,* 79 F. (2d) 124 (C. C. A. 2), certiorari denied, 296 U. S. 619; *The Sonderburg,* 47 F. (2d) 723 (C. C. A. 4), certiorari denied, 284 U. S. 618; *The Blake,* 1 W. Rob. Adm. 73, 166 Eng. Rep. 500 (1839). The *Weisthoff*

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[35] *United States* v. *Staley, supra,* Note 27, p. 42; *The Condor,* 196 Fed. 72 (S. D. N. Y., 1912) and cases cited.

[36] *The Shawnee,* 45 Fed. 769 (E. D. Wis. 1891); *The Mentor,* 17 Fed. Cas. No. 9,427 (C. C. D. Mass., 1825).

case involved a strike on a ship tied up in New York harbor. The Circuit Court of Appeals for the Second Circuit stated (79 F. (2d), at 125):

> The allegations that they attempted to make a revolt and deserted so as to forfeit their wages under 46 U. S. C., § 701 were not sustained in the District Court, and we do not find more than the making of demands, some of which were ill-advised and called for action they should have known the master could not take, instead of putting their case to him on tenable statutory grounds which entitled them to their discharge and pay. It was rather a case of poor judgment and misunderstanding of their rights than the gross misconduct which will forfeit wages.

In *The Sonderburg* case the crew went on strike on board the ship while it was safely moored in Halifax. The master had the crew arrested and charged with mutiny, but the Canadian court dismissed the mutiny charges. The crew thereafter sailed the ship back to the United States. The master refused to pay them any but trifling amounts, claiming a forfeiture on account of their conduct at Halifax, but the court without question allowed them to recover their full wages.

In *The Blake, supra,* Dr. Lushington, in refusing to forfeit the wages of intoxicated seamen who had refused to work, declared:

> It is also to be observed, that the occurrence took place in port, where the ship was exposed to no hazard; and I draw a strong line of distinction between disobedience of orders in port, and any insubordination whatever when the vessel is on the high seas, where it might expose to destruction, the ship, cargo, and lives of all on board.

We are not suggesting that offenses on a vessel safely moored in port are not within the jurisdictional limits of the mutiny statute, which applies to acts "within the admiralty and maritime jurisdiction of the United States", but that a peaceful refusal to work for a valid reason while the ship is so located does not constitute a mutiny or other violation of the statute's substantive provisions. A forceful usurpation of authority, even when the vessel is tied to a dock, might come within the statute. Cf. *Peninsular and Occidental S. S. Co.* v. *National Labor Relations Board,* 98 F. (2d) 411, 414 (C. C. A. 5), certiorari denied, 305 U. S. 653.

Viewed as a whole, we think it fair to state that the judicial authorities support our construction of the maritime statutes as not outlawing peaceful strikes by seamen on a vessel safely moored in an American port, at least when the object of the strike is clearly lawful. The modern cases appear to recognize such a right, and the older ones all deal with different situations.

This view of the statutes and cases is supported by the reasons which underlie the stringent rules of discipline applicable to seamen and the heavy penalties imposed for disobedience. The basic consideration is, of course, the safety of the vessel, the passengers, the cargo, and the crew itself. In addition there is the absence of civil authority when the ship is at sea. Neither of these factors is present when the vessel is safely [37] moored in an American harbor,[38] and they certainly do not apply when the crew of a ship so situated is merely

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[37] A vessel, even when moored to the dock, is not of course absolutely safe, any more than a factory, railroad train or automobile on shore is immune from all danger of fire or accident. But since the chance of mishap does not differ substantially in kind or degree from that on land, the need for a special and different standard of discipline does not exist.

[38] Petitioner's contention (Br., pp. 15–16, 23) that in establishing the legality of a strike a distinction must be drawn between the "home port" of a ship and other ports in the United States is without any basis. While the statutes require each ship to have a "home port," which may be changed from time to time (Home Port Act of February 26, 1925, c. 235, Secs. 1–2, 46 U. S. C., §§ 18, 1012), the aim of this enactment "was to simplify the previous technical difficulties surrounding the determination of the proper place in which to record conveyances." *The Fort Orange*, 5 F. Supp. 833, 842 (D. C. S. D. N. Y.). The "home port" is like the state of incorporation. Indeed it may be a port which is never frequented by the ship. Hearing before the Committee on the Merchant Marine and Fisheries, House of Representatives, 68th Cong., 2d Sess., January 26, 1925, *Home Ports of Vessels of the United States*, pp. 16–17 (concerning vessels sailing the Pacific ocean whose home port was St. Paul, Minnesota). Cf. *Ayer & Lord Tie Co.* v. *Kentucky*, 202 U. S. 409; *Southern Pacific Co.* v. *Kentucky*,

seeking to require the employer to accord them their rights under the law.[39]

In *Buddington* v. *Smith,* 13 Conn. 333, 335 (1839), the Supreme Court of Errors of Connecticut, in holding that a master had no right to imprison a seaman in port, declared:

> The mariners of a ship at sea are at a distance from all the ordinary restraints of government, and of course, must be subjected to other rules of discipline than those who are under more immediate accountability to law. The master, therefore, is invested with absolute authority; or, at least, a power as great as that of a master over his apprentice, or a parent over his child. His orders, when not unlawful, must be obeyed; and he has a right to compel submission to all reasonable requirements, by any punishment not unusual or dangerous; and of these punishments one of the most common

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222 U. S. 63, 67. No case or statute has ever indicated that labor had any different status in the ship's "home port" than in any other port.

[39] See Hearings Before the Committee on Merchant Marine and Fisheries, House of Representatives, 75th Cong., 1st Sess., on H. J. Res. 121 and H. J. Res. 143. Exhibit entitled "*Report on the status and Working Conditions of Seamen in the American Merchant Marine*," p. 192:

"The statutes relating to mutiny were designed to ensure obedience to the master's orders when the master must rely upon his own authority to enforce obedience and when disobedience may jeopardize the master's authority and imperil the safety of the ship. In a port of safety the master can obtain the assistance of civil authorities, the ship is not imperiled, and a strike by seamen is in consequence no different from a strike by any other class of workers."

> is confinement on ship-board. *The United States* v. *Smith,* 3 Wash. C. C. Rep. 523. *Michaelson* v. *Denison et al.,* 3 Day 294. 3 Kent's Com. 181. *The United States* v. *Freeman,* 4 Mason 412. The power is a high power, but seems to be absolutely necessary for the protection of the lives and property entrusted to the master of a vessel, while the mariners are removed from all ordinary restraints. But when the ship is in port, there is much less necessity for the exercise of this authority; and still less for the exercise of this authority on shore, especially in a civilized country. The master of a vessel is, and must be, the commander, on board; but on shore, he becomes weak as other men.

See, also, *The Blake, supra; The Condor,* 196 Fed., at 74.

Petitioner's assertion (Br. pp. 26–27) that to sustain the Board's position "will be jeopardizing the present and future safety of our country" ignores the realities of the situation. Already the shipowners and the various unions representing ship personnel, including the Union here involved, have entered into an industry-wide arbitration agreement for the settlement of all disputes during the emergency. The exercise of the right to strike or lock-out is unconditionally renounced by all parties for the duration of the war. A Maritime War Emergency Board has been set up, with a pledge that its decisions will

be accepted.[40] During the First World War a similar development took place and the unions carried out their end of the arrangement without a single strike.[41] The fact that Congress had given the seamen the status of free men by passing the Act of 1915 was used by the unions, when a shortage of seamen appeared imminent, in issuing calls to "all seafaring men ashore or afloat" "to prove that no enemy on the seas can stop the ships of the Nation whose seamen bear the responsibility of liberty."[42] In connection with the present war effort the Union here involved has already issued a call to former seamen who have taken land jobs to return to the sea to fill a

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[40] *Arbitration Agreement in Shipping Industry*, Labor Relations Reporter, vol. 9, No. 18, pp. 463–464 (December 29, 1941); *Maritime Arbitration*, Business Week, January 10, 1942, p. 69; The Trades Unionist, American Federation of Labor, Washington, D. C., January 17, 1942, p. 8.

[41] Proceedings of the Joint Shipping Industrial Conference, June 1919, p. 15; Report of the Director of Marine and Dock Industrial Relations Division, United States Shipping Board, *Marine and Dock Labor: Work, Wages, and Industrial Relations During the Period of the War* (1918), pp. 15–27, 37, 40, 45–47, 164; Maritime Labor Board, *Report to the President and to the Congress*, March 1, 1940, pp. 33–34; Hearings before the Senate Committee on Commerce, 74th Cong., 1st Sess., on S. 2582, A Bill to Develop a Strong American Merchant Marine, to Promote the Commerce of the United States, to Aid National Defense, and For Other Purposes, pp. 432–434.

[42] Hearings before the Senate Committee on Commerce, 74th Cong., 1st Sess., on S. 2582, p. 432.

growing shortage of sailors.[43] All government investigations dealing both with the experiences of the last war and conditions since point to the need for the development of "self-respecting equality" between employer and seamen rather than the "traditional disciplinary role" as a prerequisite for a stable and sound merchant marine."[44]

2. Even if, in a technical sense, the strikers' conduct were illegal, the strikers would not have forfeited their right to reinstatement under the National Labor Relations Act

This case arises under the National Labor Relations Act, not under the statute relating to revolt and mutiny. The mutiny statute is relevant only by way of justification for a refusal to reinstate which otherwise would plainly have been required under the Labor Relations Act.

It does not follow, however, that all conduct which is unlawful under some other statutory pro-

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[43] New York Times, January 10, 1942.

[44] Maritime Labor Board, *Report to the President and to the Congress*, March 1, 1940, pp. 26, 28–30; H. Doc. No. 392, 75th Cong., 2d Sess., U. S. Maritime Commission, *Economic Survey of the American Merchant Marine* (November 10, 1937), pp. 46–49; U. S. Maritime Commission, *Economic Survey of Coastwise and Intercoastal Shipping* (March 15, 1939), pp. 61–64; Federal Coordinator of Transportation, Section of Labor Relations, *Hours, Wages, and Working Conditions in Domestic Water Transportation* (September 1936), pp. 221–223; Testimony of Secretary of Labor Perkins, Hearings before the Committee on Commerce and the Committee on Education and Labor, U. S. Senate, 75th Cong., 3rd Sess., on S. 3078, pp. 974–975 (February 4, 1938).

vision affords an employer such justification. Both before and since the *Fansteel* decision it has been held repeatedly that technical or minor violations of law by employees on strike because of an unfair labor practice do not prevent the Board from ordering reinstatement. *National Labor Relations Board* v. *Remington Rand, Inc.,* 94 F. (2d) 862, 872 (C. C. A. 2), certiorari denied, 304 U. S. 576, 585; *National Labor Relations Board* v. *Carlisle Lumber Co.,* 94 F. (2d) 138, 146 (C. C. A. 9), certiorari denied, 304 U. S. 575; *National Labor Relations Board* v. *Reed & Prince Mfg. Co.,* 118 F. (2d) 874, 888 (C. C. A. 1), certiorari denied, 313 U. S. 595; *National Labor Relations Board* v. *Stackpole Carbon Co.,* 105 F. (2d) 167, 176 (C. C. A. 3), certiorari denied, 308 U. S. 605; *Republic Steel Corp.* v. *National Labor Relations Board,* 107 F. (2d) 472, 479 (C. C. A. 3), certiorari denied on this point, 310 U. S. 655; *National Labor Relations Board* v. *Colten,* 105 F. (2d) 179, 183 (C. C. A. 6); see also *Stewart Die Casting Corp.* v. *National Labor Relations Board,* 114 F. (2d) 849, 855 (C. C. A. 7), certiorari denied, 312 U. S. 680; Note, *Employee Misconduct under the Wagner Act; Developments since the Fansteel Case,* 39 Col. L. Rev. 1369. Thus, in the *Reed & Prince* case, the court declared that the *Fansteel* decision "is not applicable to bar a Board order reinstating employees guilty of minor breaches of peace on the picket line" (118 F. (2d), at 888).

Since both major and minor offenses are unlawful, these cases indicate that the fact that an employee has violated a law does not in itself always bar reinstatement. The proper criterion for differentiation is, we submit, to be found in the Labor Relations Act itself. That act authorizes the Board to order "such affirmative action, including reinstatement of employees * * *, as will effectuate the policies of this Act" (Section 10 (c)). The policy of the Act is to preserve industrial peace by preventing employers from interfering with the choice of representatives by employees or from refusing to bargain collectively. It is not the purpose of the Act, of course, to protect employees who violate other laws, whether the violation be petty or gross. Cf. *National Labor Relations Board* v. *Federal Bearings Co.*, 109 F. (2d) 945 (C. C. A. 2).

But it would not be consistent with the policy of the Act for employers who provoke their workmen to strike by unfair labor practices to escape the normal consequences of their conduct because the employees committed those minor offenses which all employers know frequently accompany strikes. We believe this to be the rationale of the cases cited. In the *Republic Steel* case the Circuit Court of Appeals declared (107 F. (2d), at 479):

In the *Fansteel* case the court was dealing with a case which involved a sit-down strike in which the strikers forcibly and unlawfully deprived their employer of possession of his plant. The court made it clear that unlawful conduct of that character deprived the participant of the right of reinstatement. We think it must be conceded, however, that some disorder is unfortunately quite usual in any extensive or long drawn out strike. A strike is essentially a battle waged with economic weapons. Engaged in it are human beings whose feelings are stirred to the depths. Rising passions call forth hot words. Hot words lead to blows on the picket line. The transformation from economic to physical combat by those engaged in the contest is difficult to prevent even when cool heads direct the fight. Violence of this nature, however much it is to be regretted, must have been in the contemplation of the Congress when it provided in Sec. 13 of the Act, 29 U. S. C. A., § 163, that nothing therein should be construed so as to interfere with or impede or diminish in any way the right to strike. If this were not so the rights afforded to employees by the Act would be indeed illusory. We accordingly recently held that it was not intended by the Act that minor disorders of this nature should deprive a striker of the possibility of reinstatement. *National Labor Relations Board* v. *Stackpole Carbon Co.*, supra.

The court there held that strikers who had been convicted of offenses which would not normally accompany a strike, such as discharging firearms, carrying concealed weapons, obstructing railroad tracks and telephone messages, malicious destruction of property, and serious assault and battery should not be reinstated but that (p. 480):

> As to the remaining offenses proved to have been committed we are satisfied from their character and from the small penalties imposed that they were all sufficiently minor to come within our decision in the *Stackpole* case and the order of the Board directing the reinstatement of the persons involved in them will be enforced.

In the instant case, as we have shown (*supra*, pp. 25, 52), the conduct of the strikers was probably not unlawful at all. But even if the refusal to obey orders which, of course, occurs in every strike, should be deemed unlawful under the mutiny statute, the violation would be at most a technical one. Indeed, the penalties imposed in cases of mere refusal to work by seamen, even when the vessel was not tied up safely in an American port, show that violations of the mutiny law in such circumstances are not regarded as more serious than minor breaches of the peace.[45]

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[45] The penalties disclosed in reported cases dealing with peaceful cessation of work, whether in American or foreign harbors, were as follows:

United States v. *Lynch*, 26 Fed. Cas. No. 15,648 (C. C. S. D. N. Y.) (N. Y., 60 days plus $1); *United States* v. *Nye*, 27

In this case the conduct of the employees was provoked and caused by petitioner's unlawful refusal to bargain. Petitioner's persistent refusal to acknowledge communications from or to see or speak to the chosen representative made a strike neither unlikely nor unreasonable. The strikers did not engage even in the minor disorders referred to in the cases cited (*supra*, p. 53). There was only the refusal to work, of which a strike, by definition, necessarily consists. The reinstatement of strikers who sought only to force the employer to bargain collectively and thus comply with the Labor Relations Act in such circumstances obviously serves to effectuate the policies of that Act.

Even if the mere act of striking might be deemed to violate some other law, the nature of the offense should be weighed in relation to the nature of the rights guaranteed by the Labor Relations Act. Where, as here, there is doubt as to whether the mutiny statute has been violated at all, and where the violation, if any, would be relatively trivial, and of no greater consequence than a breach of the peace, the policy of the Labor Relations Act rather than of the mutiny act should prevail.

Fed. Cas. No. 15,906 (C. C. D. Mass. 1855) (Boston, 30 days); *United States* v. *Seagrist*, 27 Fed. Cas. No. 16,245 (C. C. S. D. N. Y. 1860) (Palermo, Sicily, 30 days plus $10); *Hamilton* v. *United States*, 268 Fed. 15 (C. C. A. 4, 1920) certiorari denied, 254 U. S. 645 (Bermuda, 2 days plus $50); *Rees* v. *United States*, 95 F. (2d) 784 (C. C. A. 4, 1938) (Montevideo, 2 months or $50); *United States* v. *Albers*, 115 F. (2d) 833 (C. C. A. 2, 1940) (Ceylon, up to 3 months).

This does not mean that the seamen's conduct, should it be deemed to violate the mutiny act, need go unpunished. If the prosecuting officials of the Government are of opinion that that statute has been violated, they may institute proceedings, just as state officials have power to punish disorderly picketers for breach of the peace, independent of anything the Labor Board may order. But the employer, who had illegally provoked the conduct, should be required to remedy, by reinstatement, the wrong which led to the trouble.

For these reasons we suggest that it is unnecessary for this Court to determine whether or not the strikers' conduct here violated the provisions of the laws against mutiny and revolt. For even if it did, the National Labor Relations Board had power to order the strikers reinstated.

C. THE SO-CALLED BREACH OF SHIPPING ARTICLES CONSTITUTED NO VALID GROUND FOR THE DISCHARGES

Petitioner further maintains (Br., pp. 3, 6–8, 9–27, 34) that the seamen of the *City of Fort Worth* did not have the right to strike at Houston because at the time they were serving under shipping articles which provided that—

> * * * the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master * * * in everything relat-

> ing to the vessel * * * whether on board, in boats, or on shore; (R. 681).

The articles, which are in a form prescribed by law (46 U. S. C., Sec. 564), do not contain an explicit agreement not to strike. The agreement to be obedient to the directions of superiors is of course implicit in every employment relationship. The articles merely make explicit that implicit obligation. As both the Board (R. 31) and the court below (R. 778–780) held, all strikes necessarily involve disobedience to this implied agreement. But under the Act such disobedience cannot justify a discharge; not only is the right to strike guaranteed to employees by the provision in Section 7 that "employees shall have the right * * * to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection," but even more specifically, Section 2 (3) provides that employees who cease work in connection with a current labor dispute or because of unfair labor practices shall continue to be employees. It is a necessary corollary that the breach of the employment contract involved in striking does not protect an employer in discharging an employee. *National Labor Relations Board* v. *Mackay Radio & Tel. Corp.*, 304 U. S. 333, 346.

Furthermore, here the employees ceased work because of the employer's unfair labor practices, and it is well established that the Board may order

reinstatement of persons who strike in such circumstances regardless of whether there may be a technical breach of the employment contract. See cases cited *supra*, p. 19.

The instant situation is to be distinguished from that presented by an agreement not to strike, validly entered into by a *bona fide* labor organization as a result of collective bargaining. Whether breach of such a collective obligation permits discharge need not be determined here. Shipping articles are individual contracts (*Oliver* v. *Alexander*, 6 Pet. 143; *Peninsular & Occidental S. S. Co.* v. *National Labor Relations Board*, 98 F. (2d) 411, 414 (C. C. A. 5), certiorari denied, 305 U. S. 653) and cannot lawfully be construed to include a renunciation of the right to strike. Cf. *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 360–361; *National Labor Relations Board* v. *American Mfg. Co.*, 106 F. (2d) 61, 66–67 (C. C. A. 2), affirmed, 309 U. S. 629; *National Labor Relations Board* v. *Hopwood Retinning Co.*, 98 F. (2d) 97 (C. C. A. 2); *Western Union Telegraph Co.* v. *National Labor Relations Board*, 113 F. (2d) 992, 994–995 (C. C. A. 2).

That shipping articles are not to be construed as a limitation upon the right to strike is shown by *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 210–212, in which this Court indicated that the articles were intended to give employees who go to sea added

protections, not to deprive them of the rights and incidents of employment normal to that relationship on land.

Finally, even if the conduct of the seamen were to be adjudged solely on the basis of strict contract law, petitioner is not aided by the fact that the strike may have constituted a technical breach of contract. For petitioner waived the breach by continuing after the strike to receive the services of the seamen. Although the master of the ship and petitioner's local shipping agent in Houston were authorized by petitioner to discharge and replace the crew at Houston (R. 569–573, 644, 481–482), they did not do so, but allowed the men to return to their former positions and to continue in the employ of petitioner for seven days before the men were discharged (R. 295–297, 299–300, 375–377, 388, 502). An employer who "has cause justifying * * * discharge" but who "nevertheless continues, with knowledge of the facts, to receive the benefit of the servant's service * * * cannot afterwards make the breach ground for discharge." 3 Williston, *Contracts,* Rev. Ed., § 725, p. 2062; cf. *National Labor Relations Board* v. *Federal Bearings Co.,* 109 F. (2d) 945 (C. C. A. 2).

II

THE BOARD'S FINDING THAT THE EMPLOYMENT RELATIONSHIP CONTINUED AFTER THE SIGNING OFF OF SHIPPING ARTICLES IS SUPPORTED BY SUBSTANTIAL EVIDENCE; IN ANY EVENT PETITIONER DISCRIMINATED AGAINST THE MEN BY FAILING TO REHIRE THEM

Petitioner urges (Br., pp. 27–32) that the tenure of employment of the seamen of the *City of Fort Worth* automatically terminated when they signed off shipping articles at the conclusion of the voyage at Philadelphia, and hence that petitioner did not then discharge them in violation of the Act. The Board, however, found that "the tenure of employment of the [petitioner's] seamen is not terminated by the mere expiration of shipping articles" (R. 27–28), and the court below sustained the finding (R. 773–774). The evidence amply sustains the concurrent holdings of the Board and lower court upon this issue of fact. Cf. *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 461.

The five men here involved had worked continuously for petitioner without regard for the expiration of articles; although each round-trip voyage of the *City of Fort Worth* took about 25 days (R. 413–414, 213, 278), the men had been in petitioner's employ for periods ranging from 6 weeks to 18 months (R. 124–125, 177–178, 196–197, 213, 278). According to petitioner's custom, its

seamen ordinarily signed new articles when signing off the old, but even when they did not, they nevertheless considered themselves engaged for the next voyage unless expressly notified to the contrary (R. 153–154, 184–185, 199–201, 221–223, 300–301). Indeed, petitioner encouraged continuous employment by the payment of a bonus to each employee who completed a year of work (R. 185). Finally, petitioner's officers all referred to the men as having been "discharged" or "fired" upon the arrival of the vessel at Philadelphia because of their strike activity (R. 201–202, 224–225, 284, 338, 390–391, 394, 461–462, 491–492, 515), thus implicitly recognizing, as "maritime people generally" have, that the "seaman's tenure and relationship to his ship and employer are not terminated by the mere expiration of articles." *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 218; cf. *South Atlantic Steamship Co.* v. *National Labor Relations Board*, 116 F. (2d) 480 (C. C. A. 5), certiorari denied, 313 U. S. 582.

This Court's decision in the *Waterman* case is directly in point. The differences in the evidence upon which petitioner relies are matters of detail and not of substance.

But in any event, petitioner's contention, even if true, is completely immaterial. For if the employment relation did terminate by the signing off of articles, petitioner's discriminatory refusal to

rehire the men because of their union activity was, as the Board found in the alternative (R. 28n), equally an unfair labor practice under Section 8 (3) and (1) of the Act. *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177.

III

PETITIONER WAS NOT IMPROPERLY EXCLUDED FROM THE BALLOTING FOR COLLECTIVE BARGAINING REPRESENTATIVES; IN ANY EVENT PETITIONER'S REFUSAL TO BARGAIN VIOLATED SECTION 8 (1) AND (5) OF THE ACT

Petitioner challenges (Br., pp. 32–33) the certification of the Union as exclusive representative, and the consequent finding of refusal to bargain, on the ground that the Board refused to permit employer representatives to be present at the balloting conducted on one of its seven ships (see pp. 3–4, *supra*).

The court below (R. 770–771) held that in excluding petitioner's representatives, the Board acted within its discretionary power to govern the conduct of elections. This ruling, which is in accord with the only other decision directly in point (*Marlin-Rockwell Corp.* v. *National Labor Relations Board,* 116 F. (2d) 586 (C. C. A. 2), certiorari denied, 313 U. S. 594), is clearly correct. While the presence of employer representatives may be helpful to Board representatives who conduct the election in their duty to determine the eligibility of the voters, the presence of company

representatives may have the effect, though perhaps unintended, of inhibiting the employees so that the election results do not reflect the free and independent choice contemplated by the Act.[46] Accordingly, as a general rule the Board has not allowed employer representatives to be present at the polls unless the labor organization involved consents. *Third Annual Report of the National Labor Relations Board* (1938), p. 147.[47]

The decisions of this Court recognize that the Board has wide discretion in determining the steps necessary to insure a fair election. "The control of the election proceeding and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone." *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 226; see also *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 458.

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[46] As the court below stated: "* * * it [the Board] may take the view, as it evidently did in this instance, that since the presence of such representatives, unless consented to, might operate in some degree to coerce the employees and prevent them from expressing their free choice, some other means of identifying voters should be employed. The Act confers no right upon the employer to have its representatives present, and it is obvious that their presence is not essential to a fair election" (R. 770–771).

[47] Employer representatives were not permitted to be present at elections conducted by the old National Labor Board which administered section 7 (a) of the National Industrial Recovery Act. Lorwin & Wubnig, *Labor Relations Boards* (Brookings Institution, 1935), pp. 159–161.

The Railway Labor Act, upon which the National Labor Relations Act is modelled[48] specifically provides that the National Mediation Board shall hold its elections "in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier." Sec. 2 (9), 48 Stat. 1185 (45 U. S. C., Sec. 152 (Ninth)). It has been the uniform practice under that statute not to permit the representatives of employers to be present at elections.[49]

This result is consistent with, if not compelled by, the basic theory of both the Railway Labor Act and the National Labor Relations Act. Employees are to select their own collective bargaining representatives, without interference by the employer. Just as employees have no right to be represented when the stockholders of a company elect directors or directors choose personnel officers, so it is none of the employer's business whom the employees choose to represent them. Cf. *National Labor Relations Board* v. *Jones Foundry & Machine Co.*, 123 F. (2d) 552, 555 (C. C. A. 7). Since the employer has no legitimate interest in the

[48] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 44; *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 524–525.

[49] National Mediation Board, First Annual Report, (1935), p. 4. The National Mediation Board has informed the Department of Justice that its practice is not to permit employer representatives to be present at elections.

result of the election, he has no legal standing to be represented at the election.

Moreover, petitioner has not suggested and cannot suggest any way in which the presence of its representative would have affected the final result of the election.[50] The absence of an observer, or of the correct observer, for one of the contesting labor organizations has been held to be immaterial under the Railway Labor Act in the absence of a showing that the election was not honestly and fairly conducted. *Virginian Ry. Co.* v. *System Federation No. 40,* 11 F. Supp. 621, 628, affirmed, 84 F. (2d) 641, affirmed, 300 U. S. 515; *National Federation of Railway Workers* v. *National Mediation Board,* 110 F. (2d) 529, 534–535 (App. D. C.), certiorari denied, 310 U. S. 628. Even where statutes require that election officers be appointed in a certain way or be divided between opposing parties, an election is not invalidated if the statute is not complied with as long as the result of the election is not shown to be affected. *Choisser* v. *York,* 211 Ill. 56, 71 N. E. 940; *Gilleland* v. *Schuyler,* 9 Kan. 569; *People* v.

[50] Any influence which the presence of its representative might have had upon the election would have been in violation of the Act. When, during the oral argument (Tr. pp. 4–5), counsel for petitioner was asked by the Chairman of the Board whether he claimed "that there was anything wrong about the election or about the counting of the ballots," he replied only that he stood on his "objection to the exclusion of any representative from this election for the purpose of identifying voters or of observing the election."

Cook, 8 N. Y. 67, 59 Am. Dec. 451; *Ward* v. *Kropf,* 120 N. Y. Supp. 476; *Hawthorne* v. *State,* 116 Ala. 489, 22 So. 894; *Sanders* v. *Lacks,* 142 Mo. 255, 43 S. W. 653; *State ex rel. McMillan* v. *Sadler,* 25 Nev. 131, 58 Pac. 284; *Carabajal* v. *Lucero,* 22 N. Mex. 30, 158 Pac. 1088; *Dial* v. *Hollandsworth* 39 W. Va. 1, 19 S. E. 557. See 1 A. L. R. 1535, 1536.[51]

Petitioner's theory seems to be that the Board's failure to permit its observer to be present at the election invalidated the certification, and that in the absence of a valid certification petitioner was not obligated to bargain. But under the statute an employer must bargain with the representative chosen by the majority of his employers irrespective of whether any certification has been issued. E. g., *National Labor Relations Board* v. *Bradford Dyeing Ass'n,* 310 U. S. 318. Petitioner has never suggested that the union has not represented a majority of the employees.[52]

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[51] For example, in *Carabajal* v. *Lucero, supra,* an election was not set aside, although all three judges, in violation of statute, were members of the same political party.

[52] We do not read the stipulation (R. 114), in which the parties agreed that the validity of the certification depended upon the validity of the Board's ruling as to the exclusion of company representatives from the election, as challenging the fact that the union actually did obtain the majority of the votes cast in the election. See Note 50, *supra,* p. 67.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court below should be affirmed.

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FEBRUARY 1942.

APPENDIX

1

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Sec. 151 *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

* * * * *

SEC. 10. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

2

Sections 1 and 2 of the Act of March 3, 1835, c. 40, 4 Stat. 775–776, as reenacted in Sections 292 and 293 of the Criminal Code, 35 Stat. 1146 and now contained in 18 U. S. C. §§ 483 and 484, read as follows:

SEC. 483. INCITING REVOLT OR MUTINY ON SHIPBOARD.

Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their

proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than $1,000, or imprisoned not more than five years or both.

SEC. 484. REVOLT OR MUTINY ON SHIPBOARD.

Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than $2,000 and imprisoned not more than ten years.

3

Section 51 of the Act of June 7, 1872, c. 322, 17 Stat. 262, 273–274, as reenacted in the Revised Statutes in 1878, Section 4596, reads as follows:

Whenever any seaman who has been lawfully engaged, or any apprentice to the sea-service, commits any of the following offenses, he shall be punishable as follows:

First. For desertion, by imprisonment for not more than three months, and by forfeiture of all or any part of the clothes or effects he leaves on board, and of all or any part of the wages or emoluments which he has then earned.

Second. For neglecting and refusing, without reasonable cause, to join his vessel, or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel sailing from any port, either at the commencement or during the progress of any voyage; or for absence at any time without leave, and without sufficient reason, from his vessel, or from his duty, not amounting to desertion, or not treated as such by the master; by imprisonment for not more than one month, and also, at the discretion of the court, by forfeiture of his wages, of not more than two days' pay, and, for every twenty-four hours of absence, either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute.

Third. For quitting the vessel without leave after her arrival at her port of delivery, and before she is placed in security, by forfeiture out of his wages of not more than one month's pay.

Fourth. For willful disobedience to any lawful commands, by imprisonment for not more than two months, and also, at the discretion of the court, by forfeiture out of his wages of not more than four days' pay.

Fifth. For continued willful disobedience to lawful commands, or continued willful neglect of duty, by imprisonment for not more than six months, and also, at the discretion of the court, by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, of either a sum not more than twelve days' pay, or sufficient to defray any expenses which have been properly incurred in hiring a substitute.

Sixth. For assaulting any master or mate, by imprisonment for not more than two years.

Seventh. For combining with any others of the crew to disobey lawful commands, or to neglect duty, or to impede navigation of the vessel, or the progress of the voyage, by imprisonment for not more than twelve months.

Eighth. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of his wages, of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months.

Ninth. For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage; and the whole or any part of his wages may be retained in satisfaction or on account of such liability; and he shall also be liable to imprisonment for a period of not more than twelve months.

4

Section 4596 of the Revised Statutes, as amended by Section 19 of the Act of December 21, 1898, c. 28, 30 Stat. 755, 760, reads as follows:

SEC. 4596. The words "domestic trade" in this section shall include trade between ports of the United States and trade between ports of the United States and the Dominion of Canada, Newfoundland, the West Indies, and Mexico. The words "for-

eign trade" shall include trade between ports of the United States and foreign ports, except as above specified, and trade between Atlantic and Pacific ports of the United States. Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses he shall be punishable as follows:

First. For desertion, if the offense occur at a port of the United States, or a foreign port in the domestic trade, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned. If the offense occur at a foreign port in the foreign trade, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned; and also, at the discretion of the court, by imprisonment for not more than one month.

Second. For neglecting or refusing, without reasonable cause, to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel's sailing from any port, either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his vessel or from his duty, not amounting to desertion or not treated as such by the master, if the offense occur at a port of the United States or a foreign port in the domestic trade, by a forfeiture from his wages of not more than two days' pay, or sufficient to defray any expenses which have been properly incurred in hiring a substitute;

or if the offense occur at a foreign port, in the foreign trade, by a forfeiture from his wages of not more than two days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

Third. For quitting the vessel, in whatever trade engaged, at a foreign or domestic port, without leave after her arrival at her port of delivery and before she is placed in security, by forfeiture from his wages of not more than one month's pay.

Fourth. For willful disobedience to any lawful command at sea, by being, at the option of the master, placed in irons until such disobedience shall cease, and upon arrival in port, if of the United States, by forfeiture from his wages of not more than four days' pay, or upon arrival in a foreign port by forfeiture from his wages of not more than four days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

Fifth. For continued willful disobedience to lawful command or continued willful neglect of duty at sea by being, at the option of the master, placed in irons, on bread and water, with full rations every fifth day, until such disobedience shall cease, and upon arrival in port, if of the United States, by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, of either a sum of not more than twelve days' pay or sufficient to defray any expenses which have been properly incurred in hiring a substitute, or upon arrival in a foreign port, in addition to the above penalty, by imprisonment for not more than three months, at the discretion of the court.

Sixth. For assaulting any master or mate, in whatever trade engaged, by imprisonment for not more than two years.

Seventh. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, in whatever trade engaged, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months.

Eighth. For any act of smuggling for which he is convicted, and whereby loss or damage is occasioned to the master or owner, in whatever trade engaged, he shall be liable to pay such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage; and the whole or any part of his wages may be retained in satisfaction or on account of such liability; and he shall be liable to imprisonment for a period of not more than twelve months.

5

Section 4596 of the Revised Statutes, as amended by Section 7 of the Act of March 4, 1915, c. 153, 38 Stat. 1164, 1166–1167, and as now contained, with subsequent immaterial amendments, in 46 U. S. C. Sec. 701, reads as follows:

VARIOUS OFFENSES; PENALTIES

Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offenses, he shall be punished as follows:

First. For desertion, by forfeiture of all or any part of the clothes or effects he leaves on board and of all or any part of the wages or emoluments which he has then earned.

Second. For neglecting or refusing without reasonable cause to join his vessel or to proceed to sea in his vessel, or for absence without leave at any time within twenty-four hours of the vessel's sailing from any port, either at the commencement or during the progress of the voyage, or for absence at any time without leave and without sufficient reason from his vessel and from his duty, not amounting to desertion, by forfeiture from his wages of not more than two days' pay or sufficient to defray any expenses which shall have been properly incurred in hiring a substitute.

Third. For quitting the vessel without leave, after her arrival at the port of her delivery and before she is placed in security, by forfeiture from his wages of not more than one month's pay.

Fourth. For willful disobedience to any lawful command at sea, by being, at the option of the master, placed in irons until such disobedience shall cease, and upon arrival in port by forfeiture from his wages of not more than four days' pay, or, at the discretion of the court, by imprisonment for not more than one month.

Fifth. For continued willful disobedience to lawful command or continued willful neglect of duty at sea, by being, at the option of the master, placed in irons, on bread and water, with full rations every fifth day, until such disobedience shall cease, and upon arrival in port by forfeiture, for every twenty-four hours' continuance of such disobedience or neglect, of a sum of not more than twelve days' pay, or by imprisonment for not more than three months, at the discretion of the court.

Sixth. For assaulting any master, mate, pilot, engineer, or staff officer, by imprisonment for not more than two years.

Seventh. For willfully damaging the vessel, or embezzling or willfully damaging any of the stores or cargo, by forfeiture out of his wages of a sum equal in amount to the loss thereby sustained, and also, at the discretion of the court, by imprisonment for not more than twelve months.

Eighth. For any act of smuggling for which he is convicted and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage, and the whole or any part of his wages may be retained in satisfaction or on account of such liability, and he shall be liable to imprisonment for a period of not more than twelve months.

6

Section 20 of the Clayton Act of October 15, 1914, 38 Stat. 730, 738, 29 U. S. C. § 52, reads as follows:

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application,

for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

7

Section 1002 of the Merchant Marine Act, 1936, as added by the Act of June 23, 1938, sec. 45, c.

600, 52 Stat. 965, 46 U. S. C. § 1252,[53] reads as follows:

> SEC. 1002. The provisions of this title shall not in any manner affect or be construed to limit the provisions of the National Labor Relations Act, nor shall any of the unfair labor practices listed therein be considered a dispute for the purposes of this title. Questions concerning the representation of employees of a maritime employer shall be considered and determined by the National Labor Relations Board in accordance with the provisions of the National Labor Relations Act: *Provided, however,* That nothing in this title shall constitute a repeal or otherwise affect the enforcement of any of the navigation laws of the United States or any other laws relating to seamen.

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[53] This Act originally was to expire in 3 years on June 23, 1941 (Sec. 1012). Some sections including Sec. 1002 were extended until June 23, 1942. Public No. 124, 77th Cong., 1st Sess.

U. S. GOVERNMENT PRINTING OFFICE: 1943

No. 320

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

NATIONAL MARITIME UNION OF AMERICA,
Intervenor.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL MARITIME UNION OF AMERICA, INTERVENOR

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No. 320

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

NATIONAL MARITIME UNION OF AMERICA,
Intervenor.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL MARITIME UNION OF AMERICA, INTERVENOR

Opinions Below

The findings of fact, conclusions of law, and order of the National Labor Relations Board were filed on April 22, 1940, and are reported in 23 N. L. R. B., No. 2 (R. 14-44).

The opinion of the United States Circuit Court of Appeals for the Third Circuit was filed on May 6, 1941, and is reported in *Southern Steamship Company* v. *National Labor Relations Board*, 120 Fed. (2d) 505 (C. C. A. 3), (R. 769-785).

Jurisdiction

The jurisdiction of this Court to review the final decree of the Circuit Court of Appeals for the Third Circuit on a writ of certiorari is conferred by Section 240 (a) of the Judicial Code, as amended by Act of Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 938 (28 U. S. C. A., Sec. 347 (a) and Section 10 (e) and (f) of the National Labor Relations Act, July 5, 1935, c. 372, Sec. 10, 49 Stat. 453 (29 U. S. C. A., Sections 160 (e) and (f)).

Statement of the Case

Upon charges filed by the National Maritime Union of America (C.I.O.), herein called the Union,[1] the National Labor Relations Board, herein called the Board, instituted proceedings against the Southern Steamship Company, herein called the petitioner, charging that the petitioner had engaged in certain unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, herein called the Act[2] (R. 60-67).

The Board's complaint alleged, in substance (a) that petitioner had refused to bargain collectively with the Union, despite the latter's certification by the Board as the exclusive representative of the employees in an appropriate unit (R. 64-65); (b) that as a result of this unlawful conduct, a strike occurred on July 18, 1938, on petitioner's steamship *City of Forth Worth* while moored to the dock at Houston, Texas (R. 65); (c) that petitioner thereafter, on July 25, 1938, discharged five named employees because of their Union membership and participation in the strike (R. 65-66); (d) that as a result of the

(1) The National Maritime Union of America was permitted to intervene as a party to the proceedings in the United States Circuit Court of Appeals for the Third Circuit by order entered September 16, 1940 (R. 767).

(2) See Appendix, infra, pp. 30-32.

discharges, the employees of the *City of Fort Worth* on July 25, 1938, went on strike, while that vessel was moored to the dock at Philadelphia (R. 66).

Upon hearings duly held,[3] the Board found petitioner engaged in interstate commerce[4] and guilty of the unfair labor practices with which it had been charged (R. 14-44). The Board accordingly directed the petitioner to cease and desist from the unfair labor practices found (R. 41). In addition, as affirmative action to effectuate the policies of the Act, the Board ordered the petitioner (a) upon request, to bargain collectively with the Union, as exclusive representative of the employees of the appropriate unit (ibid.); (b) to offer reinstatement with back pay to the five employees discriminated against (R. 42-43); (c) upon application, to offer to six other employees, who went on strike on July 25, 1938, reinstatement to their former or substantially equivalent positions, dismissing, if necessary, those who were hired to replace them (R. 43); and (d) to post notices (R. 43-44).

The order has been affirmed by the Circuit Court of Appeals for the Third Circuit and a decree of enforcement has been entered therein (R. 769-789).

The case now comes before this Court upon writ of certiorari, where petitioner seeks to have the decree of the Court below reversed and the cause remanded to said Court with directions to set aside and vacate the findings, conclusions, decision and order of the Board, and to order the Board to dismiss the complaint against the petitioner.

---

(3) Petitioner has raised no issue as to the administrative aspects of a "fair hearing" during the proceedings.

(4) Petitioner has conceded that it is engaged in interstate commerce (R. 68). It is stipulated that it is a Delaware corporation with principal office in Philadelphia, Pa., and that it owns and operates seven vessels, carrying freight between the ports of Philadelphia and Houston. During 1937, petitioner's vessels carried 341,581 tons of freight, representing revenue amounting to $1,991,351 (R. 669-670, Bd. Exh. 3).

The Facts

The Certification of the Union

On July 16, 1937, following the hearing upon a petition to certify collective bargaining representatives, the Board directed an election to be held by a unit of petitioner's employees, consisting of the unlicensed personnel employed in the deck, engine and stewards' departments.[5] The election held on petitioner's 7 vessels disclosed a majority in favor of the Union, and on January 26, 1938, the Board certified the Union as the exclusive bargaining representative of the employees in the unit designated (R. 671-674, Bd. Exh. 4).[6] The propriety of the bargaining unit has not been challenged by the petitioner, and was reaffirmed by the Board in the instant proceedings (R. 19, 20-21).

The election, however, was challenged by the petitioner as improperly conducted. At the election held on the first of petitioner's vessels, the Board had refused, in the absence of consent of the labor organizations involved, to permit the petitioner's representatives to be present to identify the voters and observe the balloting. At the elections held on the six other vessels such consent was given and company representatives were present. The Board dismissed a petition to vacate the election, holding that certification proceedings were non-adversary and that, in the absence of Union consent, the exclusion of employer representatives was within its discretionary power (R. 671-674, Bd. Exh. 4).[7]

---

(5) *Matter of American-France Line, et al. (Southern Steamship Co.) and International Seamen's Union of America*, 3 N. L. R. B. 64. Wireless and radio operators, chief electricians on electrically driven ships, and junior engineers holding licenses were excluded from the unit.

(6) *Matter of American-France Line, et al. (Southern Steamship Co.) and International Seamen's Union of America*, 4 N. L. R. B. 1140. Of a total of 134 eligible voters in the appropriate unit, 132 votes were cast: 73 for the Union, 4 for the International Seamen's Union of America, and 51 for neither; 1 ballot was blank and 3 were challenged (R. 672).

(7) Ibid.

Petitioner in the instant case, in defense of its refusal to engage in collective bargaining, renewed its complaint that the certification of the Union was invalid (R. 69-71). It argued that as a matter of law[8] an employer's representative is entitled to be present during an employees' election, independent of Union consent. The Board rejected that contention and reaffirmed its original ruling (R. 19-21). The correctness of the Board's position has been upheld by the Circuit Court of Appeals (R. 771). Whether this was reversible error is one of the three questions presented by petitioner to this Court for review (Pet. Brief, p. 8).

Petitioner's Refusal to Bargain with the Union

The Board's complaint alleged that on January 26, 1938, the date of the Union's certification, and at all times thereafter, petitioner refused to bargain collectively with the Union as the exclusive representative of the employees in the unit designated (R. 63-66).

Petitioner denied that the Union had requested it to bargain collectively prior to August 18, 1938 (the date on which it received a registered letter from the Union requesting a conference), and alleged that on and after August 23, 1938 (the date on which it answered the letter of August 18), it maintained its position that pending a judicial determination of the validity of the election and certification, it was not required to recognize the Union. Petitioner also claimed that by reason of the unlawful acts of the employees in conducting a sit-down strike and refusing to obey orders on July 18, 1938, it was not thereafter

(8) At the hearing, the parties stipulated (R. 114):

"that no testimony will be taken on the issue raised by Respondent's answer as to the validity of the Board's certification of January 26, 1938, as embodied in Board's Exhibit No. 4, it being agreed that the validity of this certification depends upon the validity of the Board's ruling that in the absence of consent by the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives."

required to recognize the Union as the exclusive representative of its employees (R. 19, 70-71, 72).

The record reveals that shortly after the certification of January 26, 1938, Cunningham, a Union representative at Houston, requested Shreider, the petitioner's local representative, to arrange for a collective bargaining conference and the issuance of passes to the Union's shore delegates, without which they could not board petitioner's ships (R. 401, 589-592). Shreider replied that he did not have the authority to grant the requests but that he would transmit them to the Philadelphia office and communicate petitioner's answer to Cunningham (R. 590-592). Neither Cunningham nor the Union thereafter heard from Shreider (R. 592).

At about the same time, in Philadelphia, during the "latter part of January or the first part of the week in February", Palazzi, the Union's business agent, telephoned Sherry, petitioner's marine superintendent, and requested a collective bargaining conference (R. 91-93, 111-112, 515). Sherry replied that the matter was in the hands of petitioner's attorney (R. 93). Hearing no further from petitioner by the middle of February, Palazzi wrote Sherry again requesting a bargaining conference (R. 94-96, 110). He received no reply (R. 121). Later, in February, and again in March, Palazzi made two further attempts to reach Sherry by phone but was told each time that Sherry was out (R. 96-97). On both occasions Palazzi left word for Sherry to call him but Sherry never did (R. 97, 108-109). Palazzi then attempted to reach Sherry personally at petitioner's docks (R. 97) but when he reached the docks he was stopped by petitioner's watchman who, upon learning Palazzi's identity, refused to allow him to enter Sherry's office (R. 98-99).

On August 18, 1938, after the strike of July 18 and the petitioner's discharge of the strikers on July 25, Palazzi sent Sherry a registered letter requesting a collective bargaining conference (R. 71, 106; Bd.'s Exh. 6, 675). On August 23, 1938, Sherry wrote Palazzi that until the va-

lidity of the Board's certification was settled by the Board and the Courts, the question of a collective bargaining agreement was premature (R. 71, 107; Bd.'s Exh. 7, 676). On cross-examination, superintendent Sherry admitted that "from the very time the Board certified the Union on January 26, 1938" petitioner consistently took "the position that it would not bargain with the Union" (R. 544-545).

Upon these facts the Board found that petitioner had refused to bargain with the Union at all times subsequent to January, 1938 (R. 22), and that it, therefore, was guilty of an unfair labor practice within the meaning of Secs. 7 and 8(5) of the Act (R. 22, 40). It accordingly ordered the petitioner to cease and desist from this practice and, upon request, to bargain with the Union (R. 41). These findings of fact and conclusions of law have been affirmed by the Circuit Court (R. 771).

The only reason now[9] assigned by the petitioner for its refusal to bargain with the Union is the alleged invalidity of the Union's certification by reason of the exclusion of its representatives during the balloting on the first ship (Pet.'s Brief, pp. 32-33). That it refused to bargain is not disputed.

The Strike of July 18, 1938

On July 17, 1938, thirteen unlicensed seamen of petitioner's vessel *The City of Fort Worth,* members of the Union, met at the Union's hall in Houston, Texas, to find out what had been accomplished by way of obtaining a bargaining conference and passes enabling shore delegates of the Union to board the Company's ships (R. 128-129, 179-181, 433, 593-594). Advised of petitioner's consistent refusal to meet or bargain with the Union, the men unani-

(9) On this appeal petitioner apparently has abandoned two of the three defenses originally advanced as justification for its refusal to bargain with the Union. It does not now contend that the evidence "does not furnish a substantial basis of fact from which it could reasonably be inferred that it refused to bargain with the Union prior to August 23, 1938" (Pet. Brief in the Circuit Court, pp. 42-44) Nor does it assert that after the strike of July 18, 1938, it was no longer required to recognize the Union (R. 19).

mously voted to go on strike the following morning in order to compel petitioner to recognize the Union and issue boarding passes to its delegates (R. 129-131, 180-181, 594-596).

Accordingly, at 8 A. M. on July 18, while the vessel was moored to the dock at Houston, the strike was put into effect when Tracey, an oiler, failed to turn the steam "on deck" for the purpose of loading cargo (R. 128, 131-133, 180-181, 197, 219, 269). Sufficient steam was maintained, however, to operate the fire alarms, the ice machine, the sanitary pumps and other safety appliances (R. 130-131, 182, 366, 401). The absence of steam was first noticed by the first assistant engineer Paul.[10] Upon inquiry he was informed by Tracey that the men were on strike for Union recognition and passes (R. 132). Paul said he would put the steam on deck himself and Tracey replied that in that event he would "have to take the firemen out of the fire room" (R. 132). When Paul turned the steam on, Braun, a fireman on duty and a member of the Union, left the fire room and joined the strike (R. 133). Braun's watch terminated at about this time and Ferguson appeared to relieve him (R. 134). Ferguson, a member of the Union, also refused to tend the fire and was ordered out of the fire room by Robinson, the second assistant engineer, who took over the care of the fires himself (R. 134, 179, 182, 355-356, 380-382). Tracey and Ferguson thereafter joined the eleven other strikers who were seated on the poop deck, the general meeting place of the seamen when off duty (R. 135-137, 182, 270-272, 500). The ship's officers, with the assistance of the six unlicensed seamen who did not participate in the strike, then proceeded with the necessary operations for the loading of cargo[11] (R. 317-319, 355-356, 381-382). The strikers made no effort to interfere with the firing of the boilers or with the loading but during the entire strike sat on the poop deck (R. 290-292, 293, 323-324, 375, 387-388, 404, 499-502).

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(10) Misnamed "Pool" in several instances (R. 23, 367).

(11) The actual loading of cargo was performed by stevedores (R. 132, 142, 269-270).

At about 10:30 A. M., the ship's captain, Rudan, came on board. He advised the strikers that their conduct was in violation of the ship's articles, which they had signed, and thereupon ordered them individually and collectively to return to their stations (R. 138, 165-166, 273-274, 382-383, 431-435). The strikers refused to do so. Their spokesman, Warren, explained that the men were justified in striking for Union recognition and boarding passes because of petitioner's refusal to accept the Union as the representative of the men (R. 167-169, 209-210, 431-435, 483). Later in the morning, Rudan brought aboard a deputy United States Shipping Commissioner, who reading from the shipping laws, advised the strikers that according to their articles, they had agreed "to be obedient to the lawful commands of the master", and warned them that they were "subject to be logged[12] two days for one" for not obeying orders (R. 437-440, 681, and Resp.'s Exh. 2). The men, however, refused to abandon the strike. Throughout the day they remained seated on the poop deck in an orderly manner (R. 137, 241-242, 290-291, 375, 387-388, 499-502). At no time were they ordered to leave the vessel; on the contrary, they were in regular course served their midday meal by one of their own members, Smith, a messboy (R. 205-206, 325, 404, 423-424, 513).

Late that afternoon of the same day Rayzor, petitioner's local attorney, after telephoning superintendent Sherry at Philadelphia, advised Mandell, the Union's attorney at Houston, that if the strike were called off he would recommend that petitioner issue boarding passes to the Union's shore delegates, and would meet with him the following week to negotiate an agreement (R. 541-542, 616-618, 642-643). Relying upon this promise, Mandell advised the men to terminate the strike and they complied (R. 147, 450-453, 620-621). The strike ended at 7 P. M. when the men resumed their stations, and that night at about 9 P. M. the ship sailed on schedule with crew intact (R. 147-149, 275, 292-293).

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(12) Forfeiture of wages for disobedience. See 46 U. S. C. 701(4).

Upon this wholly undisputed evidence, the Board found that the strike was precipitated by petitioner's unlawful refusal to recognize and bargain with the Union (R. 25). The finding has been affirmed by the Circuit Court (R. 772).

The Discharges on July 25, 1938

Despite the admission of the captain and several officers that the crew conducted themselves in a thoroughly competent manner on the return voyage to Philadelphia and "that they were a good crew, just as they always were a good crew"[13] (R. 376), it was nevertheless decided by the captain and the officers that five of the crew[14] who had participated in the strike were not to be reshipped (R. 295-297, 299-300, 375-377, 388, 454-458, 461-462, 502, 513, 516-517). When the vessel docked at Philadelphia on July 25, 1938, and these five men signed off their shipping articles, they were informed that they would not be re-engaged[15] (R. 151, 154-155, 185-186, 201-202, 223-225, 284, 338, 391, 394).

The Board found that petitioner had discharged the five men because of their collective activity in striking on July 18 (R. 32-37), and that this constituted an unfair labor practice within the meaning of Sec. 8 (1) and (3) of the Act (R. 26, 39-40). The Board accordingly ordered the petitioner to reinstate the five men and to compensate them for their lost earnings (R. 42). These findings have also been affirmed by the Circuit Court (R. 780).

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(13) Captain Rudan testified that he had no complaints to make about the conduct of the crew on the return voyage (R. 502). Second Assistant Engineer Robinson testified that he had told the strikers, "Well, boys, let's forget all about what happened; let's string along just as though nothing had happened" (R. 376). First mate Helland testified that he felt that he had a safe crew when he sailed from Houston (R. 299-300). The only complaint about the crew that appears on the record was made by Helland, who testified that Smith, the messboy, had said "Good morning kind of half-hearted like" (R. 295-297).

(14) Warren, Tracey, Ferguson, Pfuhl and Smith.

(15) Because of Ferguson's participation in the strike, the petitioner refused to pay him a bonus of $25 to which he was entitled for having worked a full year (R. 186).

The Strike of July 25, 1938

During the return voyage from Houston, the Union members of the crew, anticipating petitioner's reprisal, decided to strike if anyone of their number were discharged on the ship's arrival at the home port in Philadelphia (R. 150-151, 244). When, therefore, the Union members learned that five of their number had been discharged, the remainder,[16] with one exception[17] whom petitioner had resigned for another voyage, left the ship in protest (R. 156-157, 202, 226, 248-249, 255-256).

The Board having found that petitioner discharged the five men unlawfully, found further that those who ceased work on July 25, 1938, in protest against the discharges, engaged in a strike,[18] and that this strike was caused by petitioner's unfair labor practices (R. 26). It accordingly ordered the men reinstated (R. 49-50). These conclusions were also upheld by the Circuit Court (R. 780).

Summary of Intervenor's Argument

1. The certification of the Union was valid and petitioner refused to bargain collectively with the Union in violation of Sec. 8 (5) of the Act. The presence of an employer's representative is not essential to a fair election. The Act confers no such right upon the employer. The Board's action in excluding petitioner's representative from the election in the absence of Union consent was, therefore, a reasonable exercise of its discretionary power "to take a secret ballot of employees." *Marlin-Rockwell Corp.* v. *National Labor Relations Board,* 116 F. (2d) 586, 588 (C. C. A. 2). In any event, petitioner does not claim that it was in fact prejudiced by the absence of an observer nor that the election was conducted in other than a fair

(16) Crassavaz, Reeves, Lathan, Burns, Hughes, Neeley and Holt. Crassavaz was later reinstated at his own request.

(17) This employee was Braun.

(18) The finding that a strike occurred on July 25th is not disputed by petitioner.

and impartial manner. Since the Board's conduct of the election was fair, the certification of the Union was valid. Petitioner concedes that it refused to bargain collectively with the Union following its certification.

2. Petitioner's action in discharging five of the strikers because of their collective activities, was "discrimination in regard to hire" as well as "tenure of employment" in violation of Sec. 8 (1) and (3) of the Act. The signing off of the articles prior to the discharge did not terminate their employment relationship. *National Labor Relations Board* v. *Waterman SS. Corp.*, 309 U. S. 206. Shipping articles were never intended to initiate or terminate the status of employees. Such benefits as were originally derived from the compulsory signing on or off of articles are now outmoded in an era of union hiring halls and collective bargaining agreements. The presence or absence of articles or of proof of custom as to re-signing of articles is entirely irrelevant where the evidence, as here, clearly establishes that the discharges and the refusal to rehire were motivated solely by the union affiliation and activities of the men discriminated against.

3. In the absence of seizure or retention of the ship, danger or damage to it, violence, disorderly conduct, or disruption of the vessel's normal operations, the conduct of the men at Houston, was lawful concerted action. The *Fansteel* case is, therefore, inapplicable. Nor was the strike illegal because of the Mutiny Act. Legislation designed to curb the pirate and enforce involuntary servitude in an era of serfdom may not be applied to modern industrial relations. The legislative policy of this country for the past half century emphasizes the equality of rights enjoyed by all labor, and guarantees to maritime, as well as land workers, the right to strike, provided only that life and property are not thereby endangered. When moored to the dock in a safe port, the vessel is an industrial plant like any other factory. The safety of the vessel, not the name of the port, determines the legality of a seaman's strike.

I

The Board's exclusion, in the absence of Union consent, of petitioner's representatives at an election to determine employees' bargaining representative, was a reasonable exercise of discretion. Petitioner's conceded refusal to bargain collectively with the Union upon its certification was in violation of Section 8 (5) of the Act.

The sole excuse here assigned by petitioner for its refusal to bargain collectively with the Union is the alleged invalidity of the election which resulted in the Union's certification. Petitioner has stipulated that "the validity of this certification depends upon the validity of the Board's ruling that in the absence of consent by the labor organizations involved, company representatives should not be permitted to be present at elections to determine collective bargaining representatives" (R. 114). It asserts that "the right of an employer to have representatives present at an election * * * is not dependent upon the consent of the labor organizations involved" (Pet.'s Brief, p. 32). The issue presented, therefore, is whether the National Labor Relations Act confers such a right upon the employer.

The Act is silent as to employer participation in the conduct of an election. Section 9 (c) of the Act provides that the Board "may take a secret ballot of employees or utilize any other suitable method to ascertain" the desires of employees as to their representatives. A wide discretion is, therefore, vested in the Board as to the procedure by which the election shall be conducted. "The control of the election proceeding, and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone." *National Labor Relations Board* v. *Waterman S.S. Corp.*, 309 U. S. 206, 226; see also *National Labor Relations Board* v. *Falk Corp.*,

308 U. S. 453, 458. "A certification proceeding is of a non adversary, fact-finding character in which the Board plays the part of a distinterested investigator seeking merely to ascertain the desires of the employees as to their representation." *Southern S.S. Co.* v. *National Labor Relations Board*, 120 Fed. (2d) 505-506 (C. C. A. 3); see also *American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401, 406.

Whether or not employers should be permitted to have representatives present at an election involves several discretionary considerations. As stated in *Marlin-Rockwell Corp.* v. *National Labor Relations Board*, 116 Fed. (2d) 586-588 (C. C. A. 2):

> "If the Board desires the assistance of a representative of the employer to identify the employees who appear to vote, it may have it. But such assistance is not essential to a fair election; identification of the voters may be obtained by other means. Apparently the Board believes that considerations in favor of the presence of an employer representative are outweighed by the possibility that his presence may act as an inhibiting influence upon the employees' freedom of choice; hence the Board's general policy of denying permission unless the labor organization involved consents."

See also *Southern S.S. Co.* v. *National Labor Relations Board*, supra, p. 507.[19]

This policy, followed in the case at bar, was an entirely reasonable exercise of the Board's discretion in order to insure a fair election. The alleged danger that such a practice might permit ineligible persons to vote, is unreal. Even if the Board's agents should fail to identify those qualified to vote, the presence of two contending Unions provided sufficient insurance against improper balloting.

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(19) Exclusion of employers at employee elections is not novel: Lorwin & Wubnig, Labor Relations Board (Brookings Institute, 1935), pp. 159-161 (Administration of Sec. 7A of the N.I.R.A.); First Annual Report of the National Mediation Board, p. 4; Attorney General's Committee on Administrative Procedure, Railway Labor, Monograph No. 17, pp. 49-56 (representation cases before National Mediation Board under Railway Labor Act).

In fact, there is no showing that the procedure adopted prevented a fair election. Petitioner does not assert that any person not entitled to vote did so, or that the election was conducted in other than a fair and impartial manner. Indeed, the record shows that doubtful votes were challenged (R. 672). In the absence of any showing of actual prejudice, petitioner's argument is purely hypothetical and must, therefore, fall. See: *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 350-351.

As previously stated, petitioner does not now challenge the Board's finding that it refused to bargain with the Union after January 26, 1938. This finding could not very well be challenged because the evidence in support of it stands wholly without contradiction in the record. The Board's conclusion that petitioner's continuous refusal to bargain with the Union was in violation of Section 8 (5) of the Act should, therefore, be upheld. *National Labor Relations Board* v. *Columbian E. & Stamping Co.*, 306 U. S. 501, 507; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 Fed. (2d) 862 (C. C. A. 2), cert. den. 304 U. S. 576, 585; *McNeely & Price Co.* v. *National Labor Relations Board*, 106 Fed. (2d) 878 (C. C. A. 3); *National Labor Relations Board* v. *Somerset Shoe Company*, 111 Fed. (2d) 681 (C. C. A. 1); *National Labor Relations Board* v. *Lund*, 103 Fed. (2d) 815 (C. C. A. 8); *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 Fed. (2d) 652 (C. C. A. 9).

II

The expiration of shipping articles does not terminate the employment relationship of seamen. It may not therefore serve petitioner as an excuse for the discriminatory discharge of the men.

The Board found that petitioner discharged the five men because of their collective activity in striking on July 18 (R. 32-37). It accordingly held that the discharges were

discriminatory and in violation of Section 8 (1) and (3) of the Act. There can be little doubt that the conclusion was proper, particularly in view of the fact that the concerted action of the men was provoked by petitioner's unfair labor practices. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 345-347; *National Labor Relations Board* v. *Remington Rand*, 94 Fed. (2d) 866, 870-871 (C. C. A. 2), cert. den. 304 U. S. 576, 585; *Black Diamond S.S. Corp.* v. *National Labor Relations Board*, 94 Fed. (2d) 875, 878-879 (C. C. A. 2), cert. den. 304 U. S. 579.

Petitioner asserts, however, that the men were not discharged but rather that their employment relationship automatically terminated when they signed off the shipping articles on July 25, 1938. The defense is untenable.

The decision of this Court in *National Labor Relations Board* v. *Waterman S.S. Corp.*, 309 U. S. 206, is decisive of the issue. The Court there declared that the statutory[20] requirement that seamen sign shipping articles at the beginning of each voyage and sign off the articles at its conclusion was intended solely for their protection and did not define the scope of the employment relationship. It was "never intended to forbid the parties from mutually undertaking to assure a crew the right to continue as employees and to re-sign if it desires after signing off articles at a voyage's end" (ibid., at p. 212). The Board could, therefore, properly hear evidence as to whether the crew had "a continuing tenure or relationship entitling them to re-sign" at the end of the voyage (ibid., at pp. 212-213).

As in the *Waterman* case, the evidence here amply supported the Board's finding that the expiration of the articles did not terminate the employment tenure of the five men who were dismissed by the petitioner. The men had been regularly employed over periods varying from six weeks to eighteen months on continuous round trip voyages which took approximately three weeks to complete

(20) 46 U. S. C. A., Secs. 564, 574. See Appendix, infra, pp. 53-54. "The protection to seamen embodied in the Federal statute * * * has existed in some form since the earliest days of the nation" (1 Stat. 131). *Waterman* case, supra, at p. 212.

(R. 124-125, 177-178, 194-196, 213, 278). Generally, it was petitioner's custom to have its seamen sign on new articles simultaneously with the signing off of the old (R. 153-154, 184-185, 199-201, 221-223, 300-301). On those occasions when this did not happen the men considered themselves engaged and were so treated by the petitioner notwithstanding the temporary absence of new articles (ibid.). Significantly, even petitioner's officers referred to the men as having been "discharged" upon the arrival of the vessel at Philadelphia (R. 201-202, 224-225, 284, 338, 390-391, 394, 461, 491-515). Sufficient evidence was present, therefore, to warrant the Board's conclusion that petitioner, "like maritime people generally", had adopted the custom and followed the principle that "a seaman's tenure and relationship to his ship and employer are not terminated by the mere expiration of articles" (ibid., at p. 218).

It follows that petitioner can derive no comfort even from its own formulation of the principle that tenure ceases upon signing off of the articles "unless the seaman affirmatively establishes a custom or agreement to the contrary" (Pet.'s Brief, p. 27). Though such burden did not rest upon the complaining seamen, it was nonetheless met.

Petitioner's formulation, however, is subject to serious objection. As we read the *Waterman* decision, this Court never intended to make the materiality of shipping articles a question of fact in every instance of a challenged discriminatory discharge.

Shipping articles from their earliest inception were designed to protect seamen against the license of a ship's officer and the exploitation of a crimp. They were not intended to define the entire employment relationship. The *Waterman* case, supra, at p. 212.

Moreover, the specific problem of whether articles could be construed as terminating employment could have had no real significance prior to the enactment of the National Labor Relations Act, because until that enactment employees had no legal recourse against an anti-union em-

ployer. Additional reasons support this conclusion. Sections 564 and 574 require the shipping articles to be signed only before "he (the master) *proceeds* on such voyage". No provision is made that the seaman sign articles upon the *commencement* of his employment. The fact, therefore, that a seaman was a member of a port crew or had begun to work, or even completed a voyage without signing articles, has been held not to deprive him of the benefits prescribed by maritime law. *The Falco*, 20 Fed. (2d) 363 (C. C. A. 2); *Jameson* v. *The Regulus*, 13 Fed Cas. No. 7198 (D. C., Pa.); *Kelly* v. *The Topsy*, 44 Fed. 631 (D. C., S. C.).

But the conditions which originally made necessary the protection afforded by shipping articles have been largely eliminated. The great majority of seamen today are hired through union hiring halls and wages and working conditions are covered by collective bargaining agreements between employers and unions. The equalization of the bargaining status of shipowners and seamen now depends upon the development of stable conditions of collective bargaining within the industry, not upon the limited individual protection secured through the signing of shipping articles. Not without reason, therefore, has the United States Maritime Commission recommended the abolition of the practice. It has been found that "Employment of seamen under shipping articles is archaic and is not consistent with modern personnel management". *Economic Survey of Coastwise and Intercoastal Shipping*, United States Maritime Commission, p. 27.

The position taken by the petitioner is therefore anomalous. It would utilize the outmoded protection of an ancient statute to deny seamen the benefits of modern legislation designed to protect them in a more progressive era. For if, as petitioner contends, there is no relationship of employment outside of the shipping articles, there is no place for collective bargaining in the maritime industry. Collective bargaining to be effective requires equality of bar-

gaining power. Such equality cannot be achieved or preserved if the employer may, at his uncontrolled option, reserve the employment status only for those whose views are acceptable to him. The legislative intent that collective bargaining shall serve as a means of "making collective agreements stabilizing employment relations for a period of time * * *" (H. Rept. No. 1147, 74th Cong., 1st Sess.), would therefore be impossible to achieve if employee tenure could be terminated at the end of any voyage.

But if shipping articles can have no bearing on the question of a seaman's employment, neither should it be necessary for the Board in every instance to take testimony as to whether a crew "had * * * a continuing tenure or relationship entitling them to re-sign" at the termination of a voyage. *Waterman* case, *supra,* at pp. 212-213.

The Act provides that an employer cannot terminate his employee's "tenure of employment or any term or condition of employment" because of union activity or affiliation (Sec. 8 (3)). In construing this legislative mandate, this Court recognized that "For the purpose of the Act, it is immaterial that employment is at will and terminable at any time by either party". *Ibid.*, at p. 219. If this be true, the presence or absence of shipping articles, or of proof of custom as to the re-signing of articles, becomes entirely irrelevant. In the first place, it is generally recognized and the Court so noted in the *Waterman* case, that in industry generally employees are customarily continued in their employment despite the limited contractual period of their employment; and that in the maritime industry it is a customary practice for shippers to re-sign their crews. *Ibid.*, at pp. 218-219. To require this inevitably available proof in every instance of a disputed discharge is therefore both unrealistic and unnecessary. But let us assume the exceptional and undoubtedly non-existent case where the employer does not make it a practice to re-sign the original crew. Let us assume further that the petitioner herein was exactly that kind of an employer. Upon the facts here presented, it

is submitted, that the Board would have had no alternative but to reach the same conclusions. For the evidence is undisputed and petitioner concedes that the only reason why it discharged the five men was because of their strike action.[21] That being the motive, it can make not the slightest difference that the employer ordinarily might have refused to re-employ them. Union activity, however, may lawfully play *no part* in discharging employees. *Kansas City Power and Light Co.* v. *National Labor Relations Board*, 111 Fed. (2d) 340, 349. "The employer may not, under cover of that right (to select the employees or to discharge them), intimidate or coerce its employees with respect to their self-organization." *National Labor Relations Board* v. *Jones and Loughlin S. Corp.*, 301 U. S. 1, 45.

Therefore, to remove whatever doubts may still exist, it is respectfully submitted that the Court adopt the following principle: **Where, by substantial evidence it is found that a seaman was discharged because of his union activities or affiliation, the employer shall be guilty of an unfair labor practice within the meaning of Sec. 8 (1) and (3); and it shall constitute no defense to such finding that (a) the seaman first signed off the shipping articles prior to being discharged or (b) that no evidence was offered to show that the employer had adopted the custom of re-signing his crew upon the termination of a voyage.**

But even if, contrary to the evidence, and in violation of the principle above set forth, it were to be assumed that the men had ceased to be employees, the petitioner's refusal to re-sign them because of their strike activity nevertheless also would have constituted a violation of Sec. 8 (1) and (3) of the Act (R. 28). The Act proscribes

(21) Petitioner has apparently abandoned the contention urged before the Board and Circuit Court that there were other and additional reasons unrelated to the strike for terminating employment of the five strikers (R. 32-37; Pet.'s Brief in the Circuit Court, pp. 29-34; Bd.'s Brief in the Circuit Court, pp. 21-22, 32-37). The existence of additional reasons, even if conceded, would be immaterial for Union activity may lawfully play *no part* in discharging employees. The Act is valid where at least one purpose and the "real motive" for discharge is Union activity. *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 132, 57 S. Ct. 650-655.

"discrimination in regard to *hiring*" as well as "*tenure of employment*" (Sec. 8 (3)). "Experience having demonstrated that discrimination in hiring is twin to discrimination in firing, it would indeed be surprising if Congress gave a remedy for the one (reinstatement for discriminatory discharge) which it denied for the other." *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 187; see also *National Labor Relations Board*, v. *Mackay R. and Tel. Co.*, 304 U. S. 333, 346, 347; *National Labor Relations Board* v. *Waumbec Mills, Inc.*, 114 Fed. (2) 226 (C. C. A. 1).[22]

III

Peaceful strike action of seamen on board a vessel moored to the dock in a safe port to induce their employer to cease an unfair labor practice is lawful. The discharge of seamen because of such action is a further unfair labor practice within the meaning of Section 8 (1) and (3) of the Act.

Reduced to its ultimate implications, it is petitioner's contention that notwithstanding the National Labor Relations Act, no seamen may engage in a strike anywhere but

(22) In the *Waumbec* case, supra, the Court stated at page 233: "The refusal to employ an applicant because he has been an active union official must certainly be regarded as a 'discrimination in regard to hire' within the natural meaning of those words, a meaning which coincides so faithfully with the declared policy of the Act that there can be no justification to reach for a strained construction. An offer of employment only on condition that the applicant will not join a union or will refrain from union activity, is without doubt a violation of Section 8(3) as a 'discrimination in regard to * * * any term or condition of employment.' It would be a most extraordinary result if the Act prohibits this milder conduct by an employer and yet permits him to deny employment unconditionally because of an applicant's former union activity. If employers are free to pursue a policy of blacklisting applicants with labor union records, then the other prohibitions of the Act are of little worth. Such a manifestation of anti-union bias on the part of an employer necessarily casts a coercive shadow upon his employees, tending to inhibit the free exercise of their right of self-organization and to deprive the employees of potential leaders. Furthermore, the exercise by employees of their right to self-organization would inevitably be restrained by the contemplation that if for any reason they should lose their present jobs they might freely be discriminated against, in seeking other employment, because of their record of union activity."

the home port without committing a felony, and not even in the home port without thereby forfeiting his employment. This follows from the petitioner's insistence that a strike during the course of a voyage is mutinous and that employment automatically terminates at the end of an articled voyage. In effect, therefore, petitioner would deny seamen the right to strike altogether if by such right is understood the concerted cessation of work without loss of employment to settle a labor dispute or an unfair labor practice. *National Labor Relations Board* v. *Mackay Radio and Telegraph Co.*, 304 U. S. 333, 346.

That an employer may not utilize the signing off of articles to discriminate against his employees because of their union affiliation or collective activity is discussed supra, Point II. We turn now to the second erroneous concept urged upon the Court. Petitioner argues that notwithstanding the provocation of a strike because of the employer's violation of the Act and the peaceful manner in which the strike is conducted while the vessel is moored safely to dock in a safe port, such strike is nevertheless unlawful because of its occurrence in an intermediate port of call, rather than in the home port.

The argument rests upon two premises: first, the essential difference between land and water employment and the paramount importance at sea of discipline and unquestioned obedience to the master's command; second, the impairment of such discipline and consequent danger to ship and cargo upon concerted action of the crew in disobedience to command prior to the termination of the voyage regardless of where such disobedience occurs, at sea or in port.

The first premise is not disputed. The National Maritime Union of America, like organized maritime labor generally, has recognized the necessity of unique and even extraordinary measures for the maintenance of safety on the high seas. It would no more condone the action of its members which jeopardizes life or property either at sea or ashore than would any other responsible trade union. This does not mean, however, that within these limits the

right to strike has been relinquished. Where the exigencies of war and the threat to national security have required ceaseless production and uninterrupted transportation of goods, organized labor as a whole, including every division of maritime labor, voluntarily surrendered the exercise of economic sanctions for the duration of the emergency. Today thousands of organized seamen are at their stations on our merchant fleet which is as yet inadequately armed and insufficiently convoyed. So far as is known, casualties in the merchant marine from mines, torpedoes and bombs may at this point exceed even those of the Navy. No whimper has come from the seamen nor complaint from the Unions.

The issue therefore is not the right to strike on the high seas or the right to strike during the war period. The sole issue before this Court is the right of seamen in periods of normalcy to withhold their services where such withholding endangers neither ship, cargo, passengers, officers or crew because the ship is then at dock and in a safe port.

If as shall be shown the continued safety of a vessel is the only recognized limitation on the right of seamen to strike, it is important that the action of the crew of the *City of Fort Worth* on July 18, 1938, be reviewed.

A. The conduct of the strike which the petitioner claims as justification for the discharge of five out of the thirteen strikers was lawful concerted activity.

The original and chronological history of the strike is set forth supra, pp. 7-10. Cited here are only the salient and undisputed facts as to the condition of the vessel and activities of the strikers during the course of the 11-hour strike.

The *City of Fort Worth* docked at Houston, Texas, on July 14, 1938, with a crew of 27 seamen including 19 unlicensed personnel for the purpose of discharging the cargo brought from Philadelphia and to take on new cargo for the return trip (R. 142, 232, 432, 683). The ship was moored or "tied up against the dock" affording passage

directly from the ship to the dock (R. 128, 137, 269). Between July 14th and July 18th, when the vessel resumed its voyage, the crew stood eight-hour port watch and slept on board the same as if at sea, except that the men could then spend their leisure ashore as well as in their bunk rooms and on the poop deck (R. 222, 239, 269, 452, 513). The port duties of the five discharged men were as follows: Smith, mess boy, had the same duties as at sea, waiting on the men at meals, washing dishes, cleaning cabins and making beds (R. 204-207, 407-409, 423, 427, 683). Tracey and Ferguson, firemen and oilers, stood two four-hour watches daily and provided the steam necessary for the operation of the winches used in loading cargo and for the sanitary and safety appliances, such as fire alarms, ice-machines and sanitary pumps. They also greased and oiled machinery (R. 122, 131-132, 134, 177, 181-182, 352, 479-480, 683). Pfuhl and Warren, able seamen, painted the sides of the ship and smokestacks, cleaned the pilot house and did odd jobs (R. 213, 269, 272, 280, 683). The actual loading and unloading of the cargo was done by stevedores (R. 132, 142, 269-270).

On Sunday, July 17th, when the union members of the crew learned that the petitioner refused to recognize the six months old certification of the Union and had declined to bargain collectively with it, they decided to call a strike the next day (R. 128-131, 179-181, 593-596). It was agreed that steam would not be supplied for operating the winches but that sufficient steam would be maintained at all times to operate all of the ship's sanitary and safety devices (R. 130-131, 595-596).

On Monday, July 18th, at 8 A. M., the strike began when Tracey, Union delegate for the engine room failed to turn the steam "on deck" for the purpose of loading cargo (R. 126, 128, 131-132, 180-181, 197, 219). When Pool, first assistant engineer, turned the steam on himself, Tracey, in accordance with prior notice, called on Braun, the fireman on duty, to join the strike, which he did (R. 132-133). At this point, Ferguson relieved Braun, whose watch had just

terminated (R. 134). Ferguson refused to fire, but remained present "to see that the steam wouldn't get too low, that the auxiliary wouldn't stop" (R. 182). Ferguson and Tracey did not leave the fire until Robinson, second assistant engineer, told Ferguson "Go on up. I will take care of things down here", and assured both of them that he would be responsible for maintaining the steam for the safety and sanitary devices. They then rejoined the eleven other strikers who were seated on the poop deck, the general place of meeting and recreation of the seamen when off duty (R. 134-137, 182, 270-272, 355-356, 380-382, 500). The ship's officers, together with the assistance of the six unlicensed seamen who did not participate in the strike, then proceeded with the necessary operations for the loading of cargo (R. 317-319, 355-356, 381-382). The strikers did not make the slightest attempt to interfere with any of the normal operations on shipboard performed by the officers and non-striking members of the crew (R. 290-292, 293, 323, 375, 387, 388, 404, 499-502). They merely sat on the poop deck (R. 135-137, 242, 290-291, 387-388, 500, 501-502).

Chief mate Helland and later Captain Rudan went to the poop deck to inquire what was the trouble and was informed by Warren, Union delegate for the deck section, that the men were striking for Union recognition (R. 139, 165-166, 219-220, 268-272, 286-288, 433, 483). Helland told the men that he "wanted them to go over the side and paint and grease the gears, and he wanted them to get the pilot house cleaned up before sailing" (R. 272). Though the men were warned by Captain Rudan and thereafter by a Deputy United States Commissioner that their conduct was in violation of the ship's articles and that they were subject to being "logged", and were ordered individually and collectively to return to work, the men refused, persisted in their strike and throughout the day remained seated on the poop deck in an orderly manner (R. 137, 138, 165-166, 241-242, 273-274, 290-291, 375, 382-383, 387-388, 431-435, 437-440, 499-502, 681). At noontime, the mess boy,

Smith, resumed his duties. With the captain's permission, the entire crew, strikers and non-strikers, were served their midday meal and Smith did the serving in the dining room. After dinner, the strikers returned to the poop deck (R. 206-207, 423-424). At no time were the men ordered to leave the vessel (R. 325, 404, 513). At no time did their refusal to work in any way endanger the safety of the ship (R. 387).

Thereafter, following telephone calls to Philadelphia and conferences between the local attorneys for petitioner and Union, assurances were given by petitioner's attorney that if the strike were called off, he would meet with the Union during the following week in an effort to negotiate an agreement and also would recommend the issuance of passes to shore delegates to board petitioner's ships (R. 616, 642-643). Thereupon Captain Rudan gave the strikers permission to leave the ship for the purpose of conferring with their shore delegates on the dock and, relying upon the assurances given, the strike ended at 7 P. M., when the employees all went back to work (R. 142-149, 242-243, 274-275, 450-453, 489-490, 513, 620-621).

The loading of the cargo was not delayed by the strike and at 9 P. M. that night the ship sailed on schedule (R. 147-149, 275, 292-293, 483).

When the vessel docked at Philadelphia, on July 25, 1938, and the crew signed off their articles, five of the thirteen employees who engaged in the strike, namely, Warren, Union delegate of the deck department; Tracey, Union delegate of the engine department; Smith, Union delegate of the steward's department; Ferguson and Pfuhl were discharged because of their participation in the strike (R. 126-127, 151-155, 185-186, 195, 201-202, 223-225, 284, 289-290, 298, 338, 391, 394, 494, 520-521, 533, 534). There had been no complaint about those men on the return voyage and the entire crew, including the strikers, had performed their duties in a competent manner (R. 295-297, 299-377, 388, 502).

Upon these undisputed facts, the Court below upheld the Board's conclusion that (R. 773-800, 30):

> "The evidence affords no basis for finding that the conduct of the union members during the strike projected them outside the framework of protection afforded by the Act. We find that respondent was not warranted in discharging any of the union members solely because of their collective activities in striking."

Petitioner's assertion that the concerted activity of July 18th was unlawful rests entirely upon the assumption that seamen, unlike shore workers, are not protected by the Act in their right to strike. Unless the alleged distinction is sound, thereby making the conduct of the strike immaterial, there can be no question but that the strike was conducted in all respects in a lawful and proper manner. This is implicitly admitted by petitioner for it is conceded:

a) "No damage was occasioned" by the strike (Pet.'s Brief, p. 15).

b) "The ship was not in any danger at any time" was expressly stated by the chief engineer at the hearing (R. 387).

c) When asked as to whether the men took possession of the ship, both the captain and the chief engineer categorically answered "No" (R. 404, 500).

d) Nor could any of the ship's officers deny that the strikers had made not the slightest attempt to interfere with any of the operations on shipboard performed by the officers, the non-striking members of the crew, or the stevedores during the course of the strike (R. 290-292, 293, 323, 375, 387-388, 404, 499, 501-502).

e) Neither the loading of the cargo nor the sailing of the vessel was in any way delayed by the action of the men (R. 293, 483).

f) The conduct of the strike was peaceable. All that the men did was merely to sit on the poop deck, their usual place of meeting and recreation (Pet.'s Brief, p. 14; R. 135-137, 241-242, 290-291, 387-388, 500-502).

g) The men were at no time ordered to leave the ship. Nor were they at any time considered trespassers (R. 325, 404, 513) for it was admitted that unlike an industrial plant, a ship is also the living quarters of its crew, both in and out of port (R. 325, 326, 405). Moreover, despite their inactivity, it was admitted that their presence afforded the ship greater protection than if they had left the ship (R. 30; footnote 22).

Absent therefore the distinguishing facts of *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, the conduct of the men cannot be said to have placed them outside the protection of the Act.

As stated in *National Labor Relations Board* v. *American Manufacturing Co.*, 106 Fed. (2d) 61, 68 (C. C. A. 2), aff'd 309 U. S. 629:

> "We do not regard the action of these or other employees in standing around the premises for a period of not more than two hours, while an attempt was being made to persuade the Company to fix a date for collective bargaining with T.W.O.C., as in the nature of a sit-down strike which would permit the termination of the employee relationship. They certainly were not claiming to hold the premises in defiance of the right of possession of the owner and we regard the case as no different from that of an ordinary strike where work has ceased because of an unfair labor practice."

See also, *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 Fed. (2d) 167, 176 (C. C. A. 3), cert. den. 308 U. S. 605; *Black Diamond S.S. Co.* v. *National Labor Relations Board*, 94 Fed. (2d) 875 (C. C. A. 2), cert. den. 304 U. S. 579.

The erroneous conclusion that seamen have no right to strike except in the home port, when the convenience of the employer has been fully served, is derived by the petitioner from the admitted necessity of discipline and obedience when the ship is upon the high seas or in an unsafe

port. Therefrom petitioner draws the further but unwarranted inference that no strike is permissible, regardless of the safety of the vessel or the peaceful manner in which, or legitimate purpose for which the strike is conducted, because such strike must inevitably impair the authority of the master and future discipline at sea.

The deduction is untenable. Whatever differences may distinguish water from land employment necessarily disappear when the sea-hazard ceases. The "perilous voyage amidst storm-swept seas" may justify the temporary surrender of a seaman's liberty. But when the sea loses its peril in the protected harbor of a safe port and the ship is securely moored to the dock, seamen resume the right guaranteed to all workers to exercise their economic strength for the protection and improvement of their mutual welfare.

Similarly erroneous is the conclusion that disobedience in port may jeopardize future discipline at sea. The same argument could be made by any traction, transit or factory employer. Whenever employees during a labor dispute or because of unfair labor practices cease work in order to strike, they necessarily neither obey orders nor perform their normal duties. They are nevertheless exercising a paramount right expressly guaranteed by Sections 7 and 13 of the Act. For experience has shown that industrial harmony is possible only where organized labor retains the right to employ economic sanctions. Without such power, the right to bargain collectively becomes meaningless.

Petitioner invokes the Mutiny statute and the decisions thereunder to support its thesis that seamen have no right to strike either at sea or in port. Unfortunately, for the petitioner, neither the legislative history nor the judicial interpretation of these ancient laws support the desired proposition. Aside from the fact that these statutes arose in an era when labor had no right either to organize or to strike and when trade unions were illegal combinations, and they were therefore never intended to apply to modern

problems of industrial relations, it is, moreover, certain that contemporary legislative policy guarantees to seamen the same rights as those enjoyed by land workers when, as here, those rights are exercised in a safe port.

(a) *The History of the Federal Mutiny and Revolt Statutes.*

The first mutiny statutes in the United States, enacted in 1790, were patterned after the English law, which was originally intended to suppress piracy.[23] The Crimes Act of 1790 provided death as "a pirate and felon" for anyone making a revolt,[24] and three years' imprisonment or a fine of $1,000 for attempting to make a revolt.[25] In 1835 the law was revised, the death penalty removed, and mutinous conduct defined in more detail.[26] Except for reenactment in 1909, with only minor changes,[27] the 1835 laws have remained virtually unchanged to the present day, and now constitute Sections 292 and 293 of the Criminal Code.[28]

Section 293 makes it a crime, punishable by a fine of not more than $2,000 and imprisonment of not more than 10 years, for a member of the crew of any American vessel (a) to usurp command of the vessel or deprive the master of authority and command on board; (b) to resist or prevent the master "in the free and lawful exercise of his authority and command" on board; or (c) to transfer such authority and command to another not lawfully entitled thereto.

Section 292 makes it a crime, punishable by a fine of $1,000 and imprisonment for 5 years, to incite revolt or mutiny on shipboard, and defines the acts constituting the crime in general terms, as follows:

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(23) 11 and 12 Will. III, c. 7, Sec. 8 (1698-9).
(24) Act 1790, c. 9, Sec. 8; 1 Stat. 113.
(25) Act 1790, c. 9, Sec. 12; 1 Stat. 115.
(26) Act 1835, 4 Stat. 776.
(27) Act 1909, c. 321, Secs. 292, 293, 35 Stat. 1145.
(28) 18 U. S. C. A., Secs. 483, 484; see Appendix, infra, pp. 54-55.

> "* * * endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof * * *."

The Crimes Act of 1790, unlike its successor in 1835, did not define the nature of the offense involved in "shall make a revolt in the ship" and "endeavor to make a revolt in such ship". The definition was supplied in 1826, *United States* v. *Kelly*, 11 Wheat. (24 U. S.) 417, where Mr. Justice Washington declared:

> "This Court is of opinion that although the act of Congress does not define this offense, it is nevertheless competent to the Court to give a judicial definition of it. We think that the offense consists in the endeavor of the crew of a vessel, or any one or more of them, to overthrow the legitimate authority of her commander, with intent to remove him from his command, or against his will to take possession of the vessel by assuming the government and navigation of her, or by transferring their obedience from the lawful commander to some other person."

The Act of 1835, which supplied the statutory definition, quoted above, was passed only after assurance was given by Senator Clayton, author of the bill, that it "was only designed to apply to conspiracies by the crew to neglect their duties, so as to endanger the safety of the ship and crew".[29]

Measured against this legislative and judicial background, it seems hardly likely that seamen would be guilty of mutiny where their refusal to paint, clean bunks, or turn on steam in no way threatened the safety of the vessel.

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(29) Congressional Globe, Vol. 2, p. 265, 23d Cong., 2d Sess., Feb. 19, 1835.

(b) *Judicial Construction of the Statutes*

The cases cited by petitioner do not support the desired conclusion that concerted activity by seamen in a safe port, which does not endanger the ship and which is provoked by the employer's violation of a statutory duty, may, nevertheless, constitute mutiny. They held merely that mutiny may occur in port as well as on the high seas, a proposition disputed neither by the Board nor by the Union. The cases are distinguishable, moreover, on their facts and by their vintage.[30]

Except for three cases discussed infra, none of the cases cited by the petitioner involved a conviction for action committed in a harbor of the United States. The illegal conduct occurred either on the high seas, in an unsafe harbor, or in a foreign port. It involved either physical assault upon officers of the vessel, or an unwarranted attempt to interfere with the navigation of the vessel through the refusal to accept a substitute master.[31] In no case was the conduct of the employer found unlawful.[32]

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(30) Pet.'s Brief, pp. 16-17, footnote 16.

(31) *U. S.* v. *Smith*, 27 Fed. Cas. No. 16344 (C. C., D. Pa., 1811)—Captain assaulted by crew while vessel in foreign river, St. Ubes, Portugal; escaped ship to save life. Command restored only after soldiers disarmed crew.

U. S. v. *Roberts*, 27 Fed. Cas. No. 16173 (C. C., S. D. N. Y., 1843)—Riot on board vessel docked at Havre, France, during attempted theft of specie.

U. S. v. *Petersen*, 27 Fed. Cas. No. 16037 (C. C., D. Mass., 1846)—Captain and mates assaulted with dangerous weapons while ship was on high seas between New Orleans and Boston.

U. S. v. *Seaarist*, 27 Fed. Cas. No. 16245 (C. C., S. D. N. Y., 1860)—Attempted revolt, facts not disclosed, while vessel lay in harbor of Palermo, Sicily, "outside low watermark on the coast", fastened to shore by cables.

U. S. v. *Keefe*, 26 Fed. Cas. No. 15509 (C. C., D. Mass., 1824)—Attempt to commit revolt in a foreign port. Neither name of port nor facts disclosed.

U. S. v. *Cassedy*, 25 Fed. Cas. No. 14745 (C. C., D. Mass., 1837)—Refusal to continue whaling voyage to Pacific from St. Helena under chief mate replacing ill master.

(32) *U. S.* v. *Staly*, 27 Fed. Cas. No. 16374 (C. C., D. R. I., 1846), cited by petitioner, involved the issue of a seaman's justifiable refusal to sail on an unseaworthy vessel. No conviction resulted.

Cf. *U. S.* v. *Ashton*, 24 Fed. Cas. No. 14470 (C. C., D. Mass., 1834), where the crew refused to continue voyage during a gale on a leaky ship and compelled the master to put back to port. The indictment was nolle prossed after Justice Story made the following observation at page 874:

> "The relation between master and seamen is created by contract; but that relation, when created, is governed by the general principles of law. Unlimited submission does not belong to that relation. I have great repugnance to creating constructive offenses, and especially where there is perfect integrity of intention."

The three cases in which seamen were convicted on account of acts committed in a domestic port, arose under the Crimes Act of 1790 and were decided by Justice Story between 1818 and 1829. *U. S.* v. *Hamilton*, 26 Fed. Cas. No. 15291 (C. C., D. Mass., 1818), and *U. S.* v. *Haines*, 26 Fed. Cas. No. 15275 (C. C., D. Mass., 1829), involved similar facts. The vessels had put back to port because of the illness of the master and the crews refused to resume the voyage under a new one. In both cases it was contended that the relationship of seamen to master was personal and that employment terminated with a change of masters. In *U. S.* v. *Gardner*, 25 Fed. Cas. No. 15188 (C. C., D. Mass., 1829), the crew refused to set sail unless "they should have a day watch below during the whole voyage". In these three cases the Court held the demands unjustified by law and found the defendants guilty of an "endeavor to make revolt".

Considered in the light of their historical background, these decisions cannot be said to represent the current trend of authority. They arose in an era when the status of a seaman differed little from that of a Negro slave, when both were subject to involuntary servitude and desertion or refusal to work were crimes punishable by capture and imprisonment.[33] This is reflected in the decisions by the uniform attempts of the defendants to free themselves from employment and their conviction only after "obstinate" refusal to resume their work upon assurances given both by the employer and the Court that their conduct would be "forgiven and forgotten".[34]

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(33) In fact, the Negro received his emancipation much earlier than the seaman. In 1897 the Supreme Court held that the Thirteenth Amendment was not intended to apply to maritime labor (*Robertson* v. *Baldwin*, 165 U. S. 275).

(34) "It became necessary, at last, to seek the interposition of a civil officer to arrest some of the leaders; and when he came on board a scene of great confusion ensued, in which the seamen acted together, and opposed with force every attempt to arrest any of them, or to reduce them to obedience; and the officers were obliged to protect themselves by resorting to their muskets and other weapons. Two of the defendants were among the principal ringleaders; and after a considerable struggle they were carried to

Of significance also is the essential difference in the nature of the demands which were made the basis of concerted action in the cited cases and in the case at bar. In the *Hamilton*, *Haines* and *Gardner* cases no violation of law was entailed in refusing to grant a "day watch below" or in refusing to release the crew of its contractual obligation because of the master's disability. Here petitioner's refusal to bargain collectively with the Union was defiance of law and constituted interference with rights guaranteed seamen under the Act. How markedly dissimilar are the two periods under comparison is perhaps best indicated by the sharp reversal of the seaman's attitude towards his employment. The emphasis today is not upon the right to cease employment because of unsatisfactory working conditions but rather upon the right to continue and improve the relationship through collective bargaining on terms of equality with the employer. The change can be explained only by the presence now and the absence then of maritime trade unions and the recognition of labor's right to self-organization and the use of its economic strength when necessary.

It is interesting to note that within a decade after the *Hamilton*, *Haines* and *Gardner* decisions, two different courts took cognizance of the distinction between disobedience at sea and in port.

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prison. On the next day two of the defendants offered to return on board the ship but * * * the other * * * remained obstinate in his refusal" (*U. S.* v. *Hamilton*, supra, at pp. 93-94).

"The defendants were then carried on shore, and being apprehended on a warrant, were brought before the district judge, who upon the examination explained the law to them, and urged their return to duty. But they refused, and were committed for trial. The owners, upon the examination, expressed an entire willingness to take them on board again, and to forgive and forget the past, if they would go upon the voyage, but these offers had no effect" (*U. S.* v. *Haines*, supra, at p. 63).

"Application then was made for a warrant to arrest them, and they were taken on shore under it, and upon a hearing before the District Judge, he explained the law to the seamen, and urged them to go on board again, and the owners agreed, if they would go on board and perform duty, this offense should be forgiven and forgotten. The defendants refused, and were then committed for trial" (*U. S.* v. *Gardner*, supra, at p. 1258).

In *The Blake*, 1 W. Rob. 73, 166 Eng. Rep. 500, 506 (1839), which involved the refusal of a crew to work while a vessel was in port, the Court declared:

> "It is also to be observed, that the occurrence took place in port, where the ship was exposed to no hazard; and I draw a strong line of distinction between disobedience of orders in port, and any insubordination whatever when the vessel is on the high seas, when it might expose to destruction, the ship, cargo and lives of all on board."

In *Buddington* v. *Smith*, 13 Conn. 334, 335-336 (1839), where the Court allowed a seaman damages for unlawful imprisonment while the ship was in port, the Court stated:

> "The mariners of a ship at sea are at a distance from all the ordinary restraints of Government, and, of course, must be subjected to other rules of discipline than those who are under more immediate accountability to law. The master, therefore, is invested with absolute authority; or at least, a power as great as that of a master over his apprentices, or a parent over his child. His orders, when not unlawful, must be obeyed; * * * But when the ship is in port there is much less necessity for the exercise of this authority." [35]

The petitioner has cited only three cases of convictions under Section 292 of the Criminal Code arising in the Twentieth Century. *Hamilton* v. *U. S.*, 268 Fed. 15 (C. C. A. 4), cert. den. 254 U. S. 645; *Rees* v. *U. S.*, 95 Fed. (2d) 784 (C. C. A. 4); *U. S.* v. *Albers*, 115 Fed. (2d) 833 (C. C. A. 2). These cases are also distinguishable on their facts. In none of them did the action of the crew occur in an American port. In none was the employer guilty of any violation of duty. No case involved the employer's obligation to bargain collectively with his employees. In two of the

(35) Cf. "The relations between master and man require an authority which is not necessary when both parties have immediate recourse to constituted authority" (*The Condor*, 196 Fed. 71, 74 [1912]).

three cases the refusal of the men to work was the result of an erroneous belief, based on a misconstruction of the statute, that they were entitled to discharge or immediate payment of their wages in a foreign port. In each case the refusal to work occurred under conditions which could be construed as dangerous to the vessel.

In *Hamilton* v. *U. S.*, supra, the merchant ship "Poughkeepsie", while returning to New York, lost three propellor blades in succession and, in response to a wireless call for assistance, was towed for repairs to Granaway's Deep, which is about three miles from Hamilton, Bermuda, but is considered part of the Hamilton harbor. Before the repairs had been completed, the six months term, for which the crew had signed up, expired. The crew, unaware of the law that seamen are not entitled to be discharged until a port of safety is reached, even though their articles of shipping have expired, if the fault does not lie with the master or the owners of the ship,[36] demanded their discharge with wages due them and free transportation to New York. The captain refused and the crew declined to work. Another crew was obtained and the original crew was confined in the hold during the return voyage. Upon these facts the men were found guilty of inciting mutiny. The indictment charged that the offense had been committed on the high seas[37] and the master testified that the ship was not at a dock and that Granaway's Deep "was in no sense landlocked."[38] Aside, therefore, from the question of the ship's position in a safe port, the decision can be justified upon the additional ground that the seamen in effect abandoned the vessel while in distress in a port of refuge.

(36) *Fairchild* v. *The Aurelius*, 8 Fed. Cas. No. 4609, p. 953 (D. Mass., 1841).

(37) Transcript of record filed April 14, 1920, in the Circuit Court of Appeals for the Fourth Circuit, No. 1816, pp. 2-3.

(38) Ibid., p. 11; *Hamilton* v. *U. S.*, supra, at p. 27.

In *Rees* v. *U. S.*, supra, the S. S. "Algic", owned by the U. S. Maritime Commission and operated by an agent, anchored in the harbor of Montevideo, Uruguay, about three-quarters of a mile from the dock, on its homeward voyage. While so anchored, the crew engaged in a sympathy strike on the assumption that the stevedores loading the ship were strikebreakers. During the course of the strike it became necessary to shift the anchorage, which the men refused to do. Upon these facts the crew was found guilty of mutiny. The Court found it unnecessary to pass on the question here presented because it found that the action of the crew had occurred in an unsafe port and that the vessel was thereby endangered.

> "The defendants contend that the crew of a vessel which is moored to a dock or is at anchor in a safe harbor have the right to strike and that the Mutiny Act, 18 U. S. C. A. Sec. 483, has no application to seamen in such a situation. But that question is not presented for decision in this case. As we have already pointed out, the Algic was not in fact moored to the dock or at anchor in a safe harbor, but was in such a position that the obedience of the crew to the orders of the master was essential to her safety. In such a case, the same rule is applicable as though the vessel were at sea, as this court decided in Hamilton v. United States, 4 Cir., 268 F. 15" (p. 792).

In *U. S.* v. *Albers,* supra, the crew of the S. S. "Ewa" refused to continue working because of the captain's refusal, later retracted, to give them an advance on their wages while the ship was at anchorage in the port of Colombo, Island of Ceylon. Claiming that their statutory rights had been violated,[39] the crew notified the master that they considered their articles broken and demanded their full pay. The demand was refused and no work was done from March 4th to March 15th, although the men were ordered to set sail on March 12th. Upon consular advice the vessel was taken to Aden, and from Aden to Port Said.

(39) 46 U. S. C. A., Sec. 597.

At Port Said the men were paid off and the ship sailed home with a new crew.

The decision holding the men guilty of mutiny can be understood only in the light of the facts presented. Although the Court found that the statute, entitling the men to a draw of half of their pay when in port, was not violated, it is clear from the tenor of the opinion that the decision would have been the other way if, as here, the violation of the employer's duty had been established.

Mutiny entails a forfeiture of wages.[40] If, therefore, as petitioner contends, a strike in a safe port where the vessel is securely moored constitutes mutiny, it would follow that suits brought by seamen to recover wages withheld because of such strike activity should result in no recovery. Precisely the reverse is true. Where peaceful strikes have occurred, without danger to the ship, wages so withheld have been recovered. Wages have been recovered even where the strike action took place in an unsafe port, where the Court found "the peril not * * * great nor the danger imminent.[41]

In *Weisthoff* v. *American-Hawaiian S. S. Co.*, 79 Fed. (2d) 124, C. C. A. 2, Cert. Den. 296 U. S. 619 (1936), the crew signed on the S. S. "Texan" at San Francisco for a voyage to Gulf and Atlantic ports and return. During the voyage watches were broken and the men required to work overtime without pay, contrary to the statutory regulations.[42] While the vessel was in New York, moored to a dock in the harbor, the entire deck crew and that of the engine room prepared a list of demands which were presented to the master. These demands did not directly refer to the master's violation of statutory regulations but did include requests for division into watches and a demand

(40) *The Mentor*, 17 Fed. Cas. No. 9427, p. 15 (C. C., D. Mass., 1825); *The Shawnee*, 45 Fed. 769 (D. C., E. D. Wis.).

(41) *The Dona Lane*, 299 Fed. 977, 980 (D. C., W. D. Wash., S. D., 1924). See also *Johnson* v. *Cyane*, 13 Fed. Cas. No. 7381 (D. C. Cal., 1870); *The Richard Matt*, 20 Fed. Cas. No. 11766 (D. C., N. D. Ill., 1864).

(42) 46 U. S. C. A., Sec. 673.

for overtime. The crew refused to work until all these demands had been satisfied and refused to leave the ship until the police were summoned to come aboard. The crew then left but the demand for their wages was evaded by the master who stated that he had no money at the time to pay them. The "Texan", after some delay due to the strike, subsequently sailed with a new crew.

A suit by the members of the striking crew to recover their wages was met with the contention by the steamship company that under the *Hamilton* case [43] the conduct of the crew constituted mutiny and that the crew had, therefore, forfeited their wages. The Court dismissed the contention and found that the statutory requirements had been violated by the Company. It declared:

> "The allegations that they attempted to make a revolt and deserted so as to forfeit their wages under 46 U. S. C. A. Sec. 701 were not sustained in the District Court, and we do not find more than the making of demands, some of which were ill-advised and called for action they should have known the master could not take, instead of putting their case to him on tenable statutory grounds which entitled them to their discharge and pay. It was rather a case of poor judgment and misunderstanding of their rights than the gross misconduct which will forfeit wages. Compare The Mentor, 17 Fed. Cas. 15, No. 9,427. Accordingly, as we accept the findings as to the character of their conduct, we agree that they are entitled to wages earned."

The decision is, therefore, clear authority for the proposition that a crew may strike in a port of safety, though it be a port of call, where statutory regulations have been violated.

A similar conclusion had been previously reached in *The Sunderborg*, 47 Fed. (2d) 723 (C. C. A. 4). In this case a crew of foreign seamen struck while the vessel was docked in the port of Halifax because of an erroneous belief that

(43) Supra, at p. 33.

the itinerary of the vessel included a trip to Europe. The master thereupon had them arrested and placed in jail, charged with mutiny. The Halifax Court dismissed the charge and the vessel resumed its voyage upon instructions to return directly to the United States. Upon the ship's arrival at Norfolk the master withheld a part of the wages as damages occasioned by the crew's refusal to work during the strike. The Court found that the strike was unjustified but nevertheless allowed recovery because of the clear violation of the statutory requirement that wages be paid within four days after the seamen have been discharged.[44]

(c) *The Equalization of Status for Maritime and Land Labor through Congressional Enactment.*

The legislative policy of the United States for the past half century refutes petitioner's contention of separate and limited status for seamen. The feudal period for maritime labor ended in 1898 with the passage of the White Act.[45] Since then, with the adoption of the LaFollette Act in 1915,[46] the National Labor Relations Act in 1935,[47] and the amendments in 1938 to the Merchant Marine Act of 1936,[48] Congress has indicated a clear intention to draw no distinction between maritime and shore labor and to accord both an equality of rights.

Up to 1898 the statutes of this country provided that a deserting seaman might be apprehended by the shore authorities and lodged in jail until the vessel sailed, when he would be delivered to the ship and compelled to complete the voyage.[49] The Thirteenth Amendment abolishing slavery and involuntary servitude had been held inappli-

(44) 46 U. S. C. A. 596.

(45) 30 Stat. 760, 46 U. S. C. A., Sec 701 (1926).

(46) 38 Stat. 1164 (1915), 46 U. S. C. A., Secs. 541-713 (1926).

(47) 49 Stat. 449, 29 U. S. C. A., Sec. 151 et seq.

(48) 52 Stat. 965, 46 U. S. C. A., Sec. 1231 et seq., amending the Merchant Marine Act, 52 Stat. 953, 46 U. S. C. A., Sec. 1112, by adding Chapter X, entitled "Maritime Labor Relations".

(49) R. S., Sec. 4598.

cable.[50] That year an aroused public opinion compelled the passage of the White Act, abolishing imprisonment for breach of articles. Deficiencies in the legislation were later corrected with the adoption of the LaFollette Act of 1915, but not until both the Republican and Democratic National Platforms of 1912 had urged the repeal of all laws and the abrogation of such treaties as provided for imprisonment of seamen charged with desertion or with violation of their contract of service.[51] The published reports and debates on these measures repeat a single theme: The restoration of equal treatment for seamen and shore workers alike.

> "* * * it (the bill) proceeds upon the principle that the sailors in our Merchant Marine service should, in their personal rights, be placed upon an equality with American citizens engaged in other industrial pursuits" (Cong. Rec., vol. 28, pt. 7, 54th Cong., 1st Sess., p. 6288, June 8, 1896).

> "There is no other class of contracts, agreements or engagements where imprisonment is the punishment for a violation of their provisions; and the Committee thought after due care and deliberation, that no such punishment ought to be inflicted; that no punishment looking to imprisonment should be inflicted for a violation of a contract. It is claimed, on the other hand, that it is very important that the seaman should fill his engagement in order that the vessel might leave her port at the appointed hour. So it is important that a railroad train should start out of a depot, in order that that train may take its time and meet its engagements; and yet it has never occurred to any American legislator to try to put it into the law that a man who violated his contract with a railroad company should be liable to imprisonment for such violation, although his violation prevented the railroad train from starting out of the depot. So the Committee have stricken out of this bill every vestige of imprisonment for violation of a civil contract" (Cong. Rec., vol. 28, pt. 7, 54th Cong., 1st Sess., p. 6286, June 8, 1896).[52]

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(50) See footnote 33, supra.

(51) House of Representatives Report No. 852, 63rd Cong., 2nd Sess., Welfare of American Seamen, p. 25.

It is petitioner's major premise that seamen, by their calling, are a class set apart from other workers. From this it draws the conclusion that unlike the case of shore workers, concerted action by seamen is mutinous in character, if not in fact. Neither the premise nor the conclusion can be reconciled with the legislative purpose manifested in the White and LaFollette Acts to delete from the law "the master's power to compel obedience of seamen in port."[53] Their acceptance would entail not only the revival of a class distinction, now outlawed by Congress, but it would also permit the illogical conclusion that whereas in port a seaman may lawfully cease his work as an individual, he may not do so in concert with others.

Any question as to the unity of rights enjoyed by all labor is removed by Sections 1, 2 (2) and (3), 7 and 13 of the National Labor Relations Act.[54] The specific exclusion of Government employees and railroad, agricultural and domestic workers (Section 2 (2) and (3), cannot be reconciled with the alleged Congressional intent to exclude seamen. The Act, read in its entirety, leaves no doubt that it was designed to protect all workers except those specifically enumerated.

This conclusion is fortified by the 1938 amendments to the Merchant Marine Act of 1936. Designed to supply unions and ship operators with the machinery for voluntary mediation and arbitration, it reiterated for the waterborne industry the same national policy enunciated for industry and labor generally. It provides, moreover, that it shall in no way be construed to limit the applicability of the National Labor Relations Act.

"Sec. 1251. *Declaration of policy.*

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial

(52) The reasoning is equally applicable as a refutation of the "happy landing" doctrine expounded by Judge Clark in his dissenting opinion, *Southern S. S. Co. v. N. L. R. B.*, 120 Fed. (2d) 505, 511-514 (C. C. A. 3).

(53) Senate Document No. 228, 65th Cong., 2nd Sess., American Sea Power and the Seamen's Act, p. 17.

(54) See Appendix, infra, pp. 50-53

> obstructions to the free flow of waterborne commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and the prompt and orderly settlement of all disputes concerning rates of pay, hours of employment, rules, or working conditions, including disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, hours of employment, rules, or working conditions."

The mutiny and revolt laws are entirely consistent with the labor relations policy of the United States. Strikes on the high seas or in an unsafe port, endangering the vessel, may be unlawful. They are, however, entirely valid when they occur in a safe port and when, as here, the vessel is moored securely to the dock.

This is the conclusion reached by the Maritime Labor Board in its exhaustive report of March 1, 1940.[55] It is there recommended

> "The Navigation Laws of the United States or any other laws relating to seamen should not be so construed as to abrogate the right of seamen to strike in domestic harbors" (p. 3).

In explanation of this recommendation, the Board stated:

> "It is the declared policy of the United States, as expressed in section 1001 of title X, * * * to eliminate the causes of certain substantial obstructions to the free flow of water-borne commerce and to mitigate and eliminate these obstructions when they have occurred * * *' but it is not a part of this policy to prohibit lawful strikes by seafaring men. Thus, the purpose of title X is to eliminate, as nearly as is possible, the causes which may lead to strikes in the maritime industry, but not to penalize seafaring men for exercising their right to engage in lawful strikes when in their judgment such strikes are unavoidable as a means of protecting their economic interests. The recommenda-

(55) The report was made by the Maritime Labor Board, created by the 1938 amendments, in compliance with Section 1260, providing for the submission of a report to the President by March 1, 1940.

tion of the Board that certificates and licenses of seafaring men should not be revoked for engaging in lawful strikes is fully in keeping with the declared policy of the United States, which seeks to establish peaceful labor relations in the maritime industry by means of advancing the principles and practices of collective bargaining, rather than by imposing legal restrictions upon the rights of maritime employees which are not applicable to other workers." [56]

CONCLUSION

The story of the seaman's struggle for security is the story of the struggle of all labor. His emancipation, however, has been longer delayed because of effective segregation from other workers at the instance of his employer. The past century has witnessed the slow and bitterly yielded recovery of this once lost equality. But opprobrium still underlies the characterization of "ward". And petitioner here would resurrect and perpetuate the ancient status of inferiority.

The seaman is a human being. He is impelled by the same inexorable economic drives as other workers. He seeks the same economic and legal remedies. These petitioner would deny to him by depriving him of his most effective weapon, the right to strike.

In an era of swiftly moving, power driven vessels, when cargo is both loaded and unloaded in every port of call, and where a port of call on one voyage frequently is a port of termination on another, where such ports are by their very selection the safest ports and physically contiguous to responsible civil authority, when the home office of the employer can be reached almost instantaneously through telephone and wireless, there can be no justification for the arbitrary limitation of the right to strike to but one port. Permit this and it follows that the day and the

(56) For the Board's full report on the subject, see Appendix, infra, pp. 47-49.

hour to strike may also be regulated. Complete prohibition will not be far distant.

The issue here transcends the immediate facts. If seamen are entitled to the same protection enjoyed by shore workers, their right to engage in concerted activity must be equally recognized. When the vessel is moored to the dock, in a safe harbor and the peril of the sea ceases, the vessel becomes for all intents and purposes, an industrial plant. At that point, distinction between sailor and factory worker stops and both may with impunity cease work in concert with others retaining their status as employees, provided only that their conduct does not endanger life or property. The safety of the vessel, not the name of the port, should determine the legality of a seaman's strike.

Respectfully submitted,

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APPENDIX

MARITIME LABOR BOARD REPORT TO THE PRESIDENT AND TO THE CONGRESS MARCH 1, 1940

SUMMARY OF PROPOSED AMENDMENTS TO TITLE X

Section 1002

"2. The navigation laws of the United States or any other laws relating to seamen should not be so construed as to abrogate the right of seamen to strike in domestic harbors;" (p. 3).

REASONS FOR PROPOSED AMENDMENTS

Amendments to Section 1002

"The language of section 1002 pertaining to the National Labor Relations Act was obviously intended to protect seamen against unfair labor practices as they are defined in that act and to safeguard the right of seamen to organize and bargain collectively through their chosen representatives. But the provision of this section which reads, 'That nothing in this title shall constitute a repeal or otherwise affect the enforcement of any of the navigation laws of the United States or any other laws relating to seamen,' has cast some doubt upon the right of seamen to strike in domestic harbors when the vessel affected by the strike is safely moored to the dock. This doubt has arisen principally because of administration of the law relating to the creation of marine boards to investigate acts of incompetency or misconduct not committed in connection with a

marine casualty or accident. This law reads in part as follows:

> '(b) The Secretary of Commerce shall establish rules and regulations for the investigation of marine casualties and accidents not involving loss of life, any act in violation of any of the provisions of this title or of any of the regulations issued thereunder, and all cases of acts of incompetency or misconduct committed by any licensed officer or holder of a certificate of service while acting under the authority of his license or certificate of service, whether or not any of such acts are committed in connection with any marine casualty or accident * * *.'

"Investigations of acts of incompetency and misconduct not committed in connection with marine casualties and accidents are made by boards, known as C boards, which are composed of representatives of the Bureau of Marine Inspection and Navigation, and appointed by the Director of that Bureau.

"The law does not define 'acts of incompetency or misconduct', but a survey of the charges preferred by the Bureau of Marine Inspection and Navigation in a number of C board cases seems to indicate that the Bureau construes the term as encompassing any behavior legally reprehensible under the navigation laws. This connotation brings within the purview of the C boards actions ranging from drunkenness and fighting among crew members to refusal in violation of articles to obey a command issued by the master during a strike in a safe harbor.

"The significance of these investigations for maritime labor arises from the fact that actions characterized as misconduct may occur in connection with strikes or other union activity directed toward establishing or enforcing the collective-bargaining rights guaranteed to labor.

"The articles which all crew members in the foreign and intercoastal trade must sign provide, in part: '* * * the

said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, * * *.' This provision can be interpreted to make any refusal to obey a command while under articles an act of misconduct, even when such refusal takes place in connection with a lawful strike in a domestic harbor when the vessel is safely moored.

"The Board is of the opinion that none of our navigation laws or other laws affecting seamen should be so construed as to make possible the suspension or revocation of certificates or licenses for engaging in lawful strikes.

"It is the declared policy of the United States, as expressed in Section 1001 of title X, '* * * to eliminate the causes of certain substantial obstructions to the free flow of water-borne commerce and to mitigate and eliminate these obstructions when they have occurred * * *' but it is not a part of this policy to prohibit lawful strikes by seafaring men. Thus, the purpose of title X is to eliminate, as nearly as is possible, the causes which may lead to strikes in the maritime industry, but not to penalize seafaring men for exercising their right to engage in lawful strikes when in their judgment such strikes are unavoidable as a means of protecting their economic interests. The recommendation of the Board that certificates and licenses of seafaring men should not be revoked for engaging in lawful strikes is fully in keeping with the declared policy of the United States, which seeks to establish peaceful labor relations in the maritime industry by means of advancing the principles and practices of collective bargaining, rather than by imposing legal restrictions upon the rights of maritime employees which are not applicable to other workers."

NATIONAL LABOR RELATIONS ACT

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of comerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is herby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 2. When used in this Act—

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or any one acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or

the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 564 (46 U. S. C. A.) *Shipping articles.* The master of every vessel bound from a port to the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or Mexico, or of any vessel of the burden of seventy-five tons or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned; and every such agreement shall be, as near as may be, in the form given in the table marked A, in the schedule annexed to this chapter, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars:

First. The nature and, as far as practicable, the duration of the intended voyage or engagement, and the port or country at which the voyage is to terminate.

Second. The number and description of the crew, specifying their respective employments.

Third. The time at which each seaman is to be on board, to begin work.

Fourth. The capacity in which each seaman is to serve.

Fifth. The amount of wages which each seaman is to receive.

Sixth. A scale of the provisions which are to be furnished to each seaman.

Seventh. Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which may be sanctioned by Congress or authorized by the Secretary of Commerce not contrary to or not otherwise provided for by law, which the parties agree to adopt.

Eighth. Any stipulations in reference to advance and allotment of wages, or other matters not contrary to law.

SEC. 574 (46 U. S. C. A.) *Shipping articles for vessels in coasting trade.* Every master of any vessel of the burden of fifty tons or upward, bound from a port in one State to a port in any other than an adjoining State, except vessels of the burden of seventy-five tons or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement in writing or in print, with every seaman on board such vessel except such as shall be apprentice or servant to himself or owners, declaring the voyage or term of time for which such seaman shall be shipped.

SEC. 483 (18 U. S. C. A.) (Criminal Code, section 292). *Inciting revolt or mutiny on shipboard.* Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof,

or unlawfully confines the master or other commanding officer thereof, shall be fined not more than $1,000, or imprisoned not more than five years, or both.

SEC. 484 (18 U. S. C. A.) (Criminal Code, section 293). *Revolt or mutiny on shipboard.* Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt or mutiny, and shall be fined not more than $2,000 and imprisoned not more than ten years.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 320.

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF OF AMERICAN MERCHANT MARINE INSTITUTE, INC., *AMICUS CURIAE.*

JOHN J. BURNS,
Attorney for American Merchant Marine Institute, Inc., Amicus Curiae.

FRANCIS S. WALKER,
WILLIAM G. SYMMERS,
Of Counsel.

THE COURT PRESS, N. Y. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 320.

SOUTHERN STEAMSHIP COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF OF AMERICAN MERCHANT MARINE INSTITUTE, INC., *AMICUS CURIAE.*

Authority for Submission.

This brief is filed on behalf of the American Merchant Marine Institute, Inc. (hereinafter called the "Institute"), as *amicus curiae* herein, pursuant to Rule 27, paragraph 9. The written consents of all the parties hereto have been filed with the Court.

The Institute is a representative association of American steamship owners and operators, numbering 44 members and operating 3,701,933 gross tons of all types of American Flag ships in the foreign and coastwise deep-sea trades.

Scope of This Brief.

The sole concern of the Institute in this case is the effect of the majority opinion of the court below upon the maintenance of discipline on shipboard as governed by maritime law. Objection is made to so much of its decision as sustains that part of the order of the National Labor Relations Board requiring reinstatement of seamen who were discharged by Petitioner after having engaged in a sit-down strike on board Petitioner's vessel, *City of Fort Worth*, at Houston, Texas, on July 18, 1938. The Institute, representing the shipping industry generally, is not concerned with those issues of the case with respect to the propriety of the certification of the collective bargaining agency or any alleged unfair labor practices of the Petitioner prior to such sit-down strike. This brief will show that a broad question of public interest has been erroneously decided by the court below to the detriment of the future of the American merchant marine.

Question Presented.

Whether the conduct of the crew of a vessel of the United States who, in breach of their agreement in the Shipping Articles to obey the commands of the master, engage in a sit-down strike on board the vessel, is such unlawful conduct as to justify their subsequent discharge and to deprive the National Labor Relations Board of authority, under the National Labor Relations Act, to order their reinstatement.

The Decision Below.

The court below erroneously answered the question (120 F. (2d) 505) in the negative when the strike occurred in an alleged "safe" domestic port. The basis of its

decision may be stated in the words of the majority opinion (p. 510):

> "It is, therefore, clear that upon authority the question of the right of seamen to strike under the circumstances of the case before us is still an open one. Upon reason, however, we think that there is no sound basis for depriving seamen of this right to strike when, as here, their vessel is moored to the dock in a safe domestic port. * * *
>
> It must be concluded, we think, that when a vessel is safely moored in a domestic port the maritime law does not require the denial to seamen of the right to strike which is now freely accorded their fellows who labor on the land."

The court below seems to have conceded, and the Board likewise, that a strike of the crew of a vessel when at sea, or in a port of a foreign country, or in an "unsafe" domestic port, is such unlawful conduct in contravention of applicable maritime law as to justify the discharge of the participants in the strike (p. 509).

Circuit Judge Clark, dissenting, considered unsound the distinction of the majority between the standard of duty required of the crew of a vessel when not "safely moored in a domestic port" and the absence of such standard when so moored.

Statutes Involved.

The statutes here involved are the National Labor Relations Act (29 U. S. C., Secs. 151-166), and particularly Sections 7 and 8 thereof, and the following section of the Criminal Code:

> Section 292 (18 U. S. C., Sec. 483). Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the

admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than $1,000, or imprisoned not more than five years, or both.

Statement.

The facts have been sufficiently stated in the brief for Petitioner and need not be repeated here.

Prior to argument on the specific question here involved, it should be pointed out that the rights of American seamen and their correlative duties are governed by a complex and thorough system of maritime law, most of which is statutory. Under this system the employee status of seamen is unique. Induction into the relationship begins with the signing of Shipping Articles.

Shipping Articles constitute the written contract of employment of the crew. The procedure under which the crew is "signed on" (employed) and "signed off" (discharged), and the form of the Articles themselves, are carefully prescribed by the Congress.[1] Seamen must sign on in the presence of the master of the vessel and of a Shipping Commissioner (in domestic ports) or consular officer (in foreign ports).[2] The following stipulation,

[1] 46 U. S. C., §713.
[2] 46 U. S. C., §§564, 565, 570; 22 U. S. C., §74.

contained in the Articles, must be read to the crew when signing on:[3]

> "And the crew agree to conduct themselves in an orderly, faithful, honest and sober manner, and to be *at all times* diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, *whether on board, in boats, or on shore;* * * * It is also agreed that if any member of the crew considers himself to be aggrieved by a breach of the agreement, or otherwise, he shall represent the same to the Master or other officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require * * *." (Italics supplied.)[4]

The term of the Articles must be specific. They may be for a stated period within certain voyage limits, or for a stated voyage.[5]

The statutory formalities and requirements above described are but part of the elaborate scheme under which seamen are intended to be protected against abuse or their own indiscretions, the dangers of which were more apparent in a by-gone [illegible], but which today are hardly apparent or real.

Once having "signed on" in the service of the ship, seamen are automatically clothed with many benefits. They are protected as to the quality and quantity of food and drink (46 U. S. C., Sec. 713); living quarters (46 U. S. C., Sec. 660a); minimum manning and wage scales

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[3] 46 U. S. C., §§565, 713.

[4] On receiving certificates as seamen they must take an oath faithfully to obey lawful commands of superior officers "on shipboard". 46 U. S. C., §672(g).

[5] 46 U. S. C., §§564, 565, 570.

(46 U. S. C., Sec. 1131); clothing and heat (46 U. S. C., Sec. 669); hours of labor and division of watches (46 U. S. C., Sec. 673); seaworthiness of the vessel (46 U. S. C., Secs. 654, 658, 659) and in many other respects touching their daily lives and labor. They receive, under the general maritime law, one of the earliest forms of workmen's compensation, known as the right to "maintenance and cure", when they are injured or fall ill while in the service of the ship. This is in addition to a right of action for damages when there has been negligence on the part of the vessel or fellow crew members, and despite their own contributory negligence or assumption of risk.[6]

In general, seamen have been for centuries regarded as the "wards of the admiralty" and have also been called "wards of the legislature".[7]

While thus the recipients of benefits not common to shore labor, seamen must of necessity be called upon to recognize correlative duties necessary in the maritime service. These duties involve, to a limited extent, the surrender of certain personal liberties and require that the seamen, while engaged in the service of the vessel, must at all times be amenable to and carry out the lawful commands of the master,[8] even as the vessel is at all times subject to perils of fire, the elements and other ever present maritime hazards.

Summary of Argument.

It was conceded both by the court below and the Board that if the discharge of the seamen in question was justified the National Labor Relations Act gives the Board no authority to order their reinstatement; it was conceded that violation by members of the crew of the statute

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[6] The Osceola, 189 U. S. 158 (1902); 46 U. S. C., §688.

[7] Robinson on Admiralty (1939) 283.

[8] U. S. Maritime Commission, Economic Survey of the American Merchant Marine, p. 46. H. Doc. No. 392, 75th Cong., 2d Sess. (1937); see Robertson v. Baldwin, 165 U. S. 275 (1897).

prohibiting attempts to make a revolt (18 U. S. C., Sec. 483) would constitute sufficient justification for their discharge; it was further conceded by the court below that a sit-down strike, such as in this case, occurring at sea or in an "unsafe" port, would be violative of the statute. This brief, therefore, is limited to the following points:

1. The statute (18 U. S. C., Sec. 483) requiring obedience on the part of the crew of a vessel of the United States specifically extends to all waters within the admiralty and maritime jurisdiction of the United States and no room exists for distinction therein between so-called "safe domestic ports" and other waters within such jurisdiction.

2. Even if it be conceded that determination of the scope of the statute is subject to "reason", reason itself clearly indicates the necessity of holding applicable the statutory prohibitions regardless of where, within the admiralty and maritime jurisdiction of the United States, the vessel may be.

3. Irrespective of the existence of such statutory prohibition the conduct of the crew in this case was such as to warrant their discharge.

Argument.

I.

The statute requiring obedience on the part of the crew of a vessel of the United States specifically extends to all waters within the admiralty and maritime jurisdiction of the United States and no room exists for distinction therein between so-called "safe domestic ports" and other waters within such jurisdiction.

The relevant parts of this statute, set forth in full at page 5, *supra*, are: "Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, * * * solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel or to refuse or neglect their proper duty on board thereof, * * * shall be fined not more than $1,000, or imprisoned not more than five years, or both" (18 U. S. C., Sec. 483).

There can be no question, and no question was raised below, but that those seamen discharged by the petitioner did solicit, incite or stir up others of the crew to disobey or resist the lawful orders of the master or other officers of the *City of Fort Worth*, or to refuse or neglect their proper duty on board thereof. The court below says that because such conduct occurred in a "safe domestic port" it is not within the purview of the Act. In so holding it completely ignored the plain statutory language making the offense punishable whether it occurs on "the high seas" or on "*any other waters* within the admiralty and maritime jurisdiction of the United States". Clearly the port of Houston, Texas, is wit[illegible]n

such jurisdiction and the vessel and its crew on board when tied to a pier there are subject to such jurisdiction.[9]

It should be unnecessary to go beyond the words of the statute. No previously adjudicated case, however, has held the statute inapplicable because of the location of the vessel at the time—whether on the high seas, in a foreign or domestic port, or in a safe or unsafe port.[10] The cases are adequately covered in Petitioner's brief.

It has been claimed that the cases applying the statute to conduct on board a vessel in a United States port are the relics of a by-gone era and should give way to modern social concepts. It is submitted, however, that such changes are the functions of Congress, and that the court below erred in taking upon itself the modification of the criminal statutes of the United States to accord with its views of present day social policy. It will be shown in Point II of this Argument that present day social policies do not indicate the desirability of any such change in the law but on the contrary that the necessities of modern

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[9] The Daniel Ball, 77 U. S. 557 (1871); The Genesee Chief, 45 U. S. 465 (1851); Ex Parte Boyer, 109 U. S. 629 (1884); ROBINSON ON ADMIRALTY, §7. That the port of Houston, Texas, specifically is within such jurisdiction see The Ditmar Koel, 65 F. (2d) 555 (C. C. A. 5th, 1933).

[10] United States v. Albers, 115 F. (2d) 833 (C. C. A. 2d, 1940) while vessel at Colombo, Ceylon; Rees v. United States, 95 F. (2d) 784 (C. C. A. 4th, 1938) at Montevideo; Hamilton v. United States, 268 Fed. 15 (C. C. A. 4th, 1920), cert den. 254 U. S. 645, at Bermuda; United States v. Bennett, Fed. Cas. No. 14,576 (D. Md. 1877) at Garonne River near Bordeaux; United States v. Cassedy, Fed. Cas. No. 14,745 (C. C. Mass. 1837) at St. Helena; United States v. Gardner, Fed. Cas. No. 15,188 (C. C. Mass. 1829) at Boston Harbor; United States v. Hamilton, Fed. Cas. No. 15,291 (C. C. Mass. 1818) at Salem, Massachusetts; United States v. Keefe, Fed. Cas. No. 15,509 (C. C. Mass. 1824) at foreign port; United States v. Seagrist, Fed. Cas. No. 16,245 (S. D. N. Y. 1860) at Palermo, Sicily; United States v. Staly, Fed. Cas. No. 16,374 (C. C. R. I. 1846) at Providence River, R. I.

ship operation require more vigilant attention to their duties on the part of the crew than in the earlier years of the last century.

After the decision of the Circuit Court of Appeals in the *Algic* case (*Rees* v. *United States*, 95 F. (2d) 784 (C. C. A. 4th, 1938)) attempts were made to induce Congress to amend this statute. Examples of such attempts are H. R. 3427 and H. R. 3428, 76th Congress, 1st Session (1939), which were bills to limit the locus of the crimes of revolt and of attempt to revolt to vessels "under way on the high seas".

The United States Maritime Commission in submitting a report on these bills to the House Committee on Merchant Marine and Fisheries, pursuant to request, stated its opinion that the present law is applicable to the proscribed misconduct on American vessels wherever located and recommended that the bills do not pass. This report was submitted without objection of the Acting Director of the Bureau of the Budget and under well known government practice is therefore deemed to be consistent with the program of the President. The report is an official record of the House Committee on Merchant Marine and Fisheries and is set forth in full in the Appendix to this brief as a document which will merit the interest and attention of the Court. Needless to say the bills did not pass.

Congress, in amending the Merchant Marine Act, 1936, to create the Maritime Labor Board for the mediation of labor disputes (46 U. S. C., Sec. 1251-1262), specifically provided "that nothing in this title shall constitute a repeal or otherwise affect the enforcement of any of the navigation laws of the United States or any other laws relating to seamen."[11]

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[11] 46 U. S. C. §1252. "If this means what it says, the mutiny provisions invoked in the Algic case (Rees v. United States, supra) are still law." ROBINSON ON ADMIRALTY, 353.

Since the plain words of the statute make punishable the offense of attempting to make a revolt on a vessel of the United States, wherever located, without excluding "safe domestic ports"; since no prior adjudication of this statute has recognized such limitations, and since Congress has refused to enact into law the limitation proposed by the court below, the Court should hold that the discharge of the seamen involved was fully justified.

II.

Even if it be conceded that the determination of the scope of the statute is subject to "reason", reason itself clearly indicates the necessity of holding applicable the statutory prohibitions regardless of where, within the admiralty and maritime jurisdiction of the United States, the vessel may be.

The majority of the court below, after rejecting the previously decided cases and passing over the clear language of the statute making the offense cognizable on "any waters within the admiralty and maritime jurisdiction", considered the question before it an open one and arrived at its conclusion on "reason". The basis of its reason was that the disobedience of the crew to the orders of the master did not prejudice the safety of the vessel because she was "moored in a safe domestic harbor". While it is submitted the court was bound by the plain language of the statute and therefore the question before it was not subject to a decision based on "reason" alone, nevertheless, even assuming the question should be so determined, reason will show that the court's conclusion was in error.

It is fundamental that:

"A ship that is not manned by a competent crew is unseaworthy." *Peninsular and Occidental S.S. Co.* v. *Na-*

tional Labor Relations Board, 98 F. (2d) 411, 414, 415 (C. C. A. 5th, 1938) (cert. den. 305 U. S. 653, 1938), citing *Propeller Niagara* v. *Cordes*, 62 U. S. 7 (1858). As the court said in the *Peninsular & Occidental* case:

> "It would be difficult to imagine any greater grounds of incompetency than disobedience to the lawful orders of the master and the possibility of mutiny. It would be gross negligence for a vessel to put to sea with that kind of crew • • • therefore, it cannot be said that it was not a necessary measure for the safety of the ships that the company should discharge the entire crews and replace them with other crews that would not be torn by dissension and probably be mutinous" (p. 415).

And see *Texas Co.* v. *National Labor Relations Board*, 120 F. (2d) 186 (C. C. A. 9th 1941).

In *New York and Cuba Mail S. S. Co.* v. *Continental Insurance Co.*, 117 F. (2d) 404 (C. C. A. 2d, 1941) (cert. den. 313 U. S. 580), the owners of the ill-fated *Morro Castle* were denied indemnity from their underwriters for liabilities incurred in consequence of loss of life and other damages resulting from that disaster, because of their neglect to provide proper watches, hold fire and boat drills while in port, or properly to prepare the men and equipment for the emergency of fire.

The Maritime Commission, in its report, dated March 27, 1939, to the House Committee on Merchant Marine and Fisheries (see Appendix), specifically recognized the necessity of an alert and responsive crew:

> "The fact that a vessel may be in a safe harbor does not, under existing law, and it is submitted, should not, give sanction to the offenses covered by the

> mutiny statutes. It is apparent to all those familiar with the sea that no vessel is safe unless she is, among other things, manned by a competent crew which means, in short, a crew alert to its duties and responsive at all times to the lawful commands of the master. A crew which does not meet this test is not competent and must, moreover, be lacking in that morale which is necessary to the safe preservation of the ship, her passengers and cargo. Because of the human factor involved, it is difficult to see how the morale of a crew which feels that it should be free to disobey the lawful commands of the master when the vessel is not 'under way on the high seas', can be revived with automatic regularity when the ship weighs anchor or crosses an imaginary line to the high seas."

Maritime records are replete with incidents of damage and disaster occurring to vessels while anchored in apparently "safe" harbors and moored to docks in apparently "safe" ports.[12]

Recent regulations of the Bureau of Marine Inspection and Navigation, Department of Commerce (Bureau Memorandum dated December 10, 1941) contain instructions to ship operators "regarded as the minimum proper steps to be taken for the protection of ships at berth or anchored * * * designed to cover the average cargo vessel and tanker, * * *." These instructions include the following:

> "1. Efficient continuous watches should be maintained both day and night by a deck officer and an engi-

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[12] S. S. Panuco, caught fire while tied to dock at Brooklyn, New York, on September 18, 1941, N. Y. Times, Sept. 19, 1941.

S. S. Pocone, fire while tied to dock at New York on January 1, 1942. N. Y. Times, Jan. 2, 1942.

S. S. Lancaster, averted disaster by putting into stream when fire destroyed pier, New York harbor, January 8, 1942, N. Y. Times, Jan. 9, 1942.

neer officer. The night relief officers should remain actually on watch and make tours of the decks, superstructure, cargo spaces where cargo is being worked, boiler rooms, engine rooms, and machinery spaces at irregular, but sufficiently frequent intervals, to check on conditions and actions of ship and shore personnel.

• • •

7. Steam should be maintained on at least one boiler on steam-powered ships to provide light and fire protection. Fire pumps, fire mains and fire detection equipment should not be dismantled or disabled without the permission and knowledge of the officer in charge of the ship and the engineer on duty."

Many other precautionary measures, governing procedure during war or national emergency, are listed. Obviously no vessel whose crew is engaging in a sit-down strike could comply with these requirements. The Department's circular contains an excerpt from a letter to the Secretary of Commerce from the Secretary of the Navy, dated November 25, 1941, laying emphasis on the fact that major efforts "for safeguarding shipping must be concentrated *in the harbors and ports* frequented by such shipping." (Italics supplied.)

A vessel must be ever ready, with a competent crew, to act in an emergency. Even in normal times a vessel at anchor in a "safe" port must be prepared for emergencies, for example, to veer anchor chain if collision with another vessel seems imminent; or to drop additional anchors to prevent dragging into other vessels.[13] This requires an attentive crew to man the anchor windlass and other mechanisms of the ship. A vessel at dock must be ever

[13] FARWELL, THE RULES OF THE NAUTICAL ROAD, Sec. 114, p. 236 (U. S. Naval Institute, 1941).

alert to the danger of fire spreading from the pier, or to prevent fire on the vessel from spreading to the pier or to other vessels. In the circumstances steam must be maintained and a competent crew ready and alert to man the fire pumps and apparatus, to free the lines and hawsers, or cut them on a moment's notice if necessary, and to do innumerable other similar tasks incident to ordinary seamanship. In this the personnel of the vessel must act as a team. *Texas Co.* v. *National Labor Relations Board*, *supra*.

None of the authorities relied upon by the court below controvert the foregoing principles, nor do they support the court's conclusion either in reason or in law. Decisions relied upon were: *Weisthoff* v. *American Hawaiian Steamship Co.*, 79 F. (2d) 124 (C. C. A. 2d, 1935) (cert. den. 296 U. S. 619, 1935); *Black Diamond Steamship Co.* v. *National Labor Relations Board*, 94 F. (2d) 875 (C. C. A. 2d, 1938) (cert. den. 304 U. S. 579, 1938); *The Blake*, 1 W. Rob. 73, 166 Eng. Rep. 500 (1839); *The South Portland*, 111 Fed. 767 (D. Wash. 1901).

The inapplicability of the *Weisthoff* case has been pointed out in the brief for the Petitioner. Whatever implications might have been drawn from it as to the right of seamen to strike on shipboard have been disposed of by the later decision of the same circuit in *United States* v. *Albers*, 115 F. (2d) 833 (C. C. A. 2d, 1940). The same may be said for *Black Diamond Steamship Co.* v. *National Labor Relations Board*, *supra*, although how any such implication could be derived from that case is difficult to see.

The Blake, *supra*, decided by Dr. Lushington in the former English High Court of Admiralty, involved a suit by a mariner for wages earned while a member of the crew of a vessel for a period of twenty-two months. During the course of the voyage, on November 3, 1838, a

Saturday night, while the vessel was in St. Helena, the plaintiff with several other members of the crew engaged in a drinking bout and became intoxicated. At four-thirty the next morning they were ordered by the master, whose predecessor had admittedly set the crew "the worst possible example", to heave anchor, and, being still in a state of intoxication, they refused to obey his orders (p. 87). The plaintiff, a very short time thereafter, returned to work and discharged his duties for the remainder of the voyage. Under the then English law the court was faced with the alternative of depriving the plaintiff of his entire wages for the twenty-two month period, for a single act of disobedience while under the influence of liquor, and with contributing causes, or allowing him his wages in full (p. 74). Acting on equitable principles, the court granted full wages.[14] The conduct of the seaman was no more than a single unpremeditated act of disobedience while under the influence of liquor, as distinguished from a wilful, concerted action depriving the master of his authority and refusing his lawful commands.

The South Portland, *supra*, also cited by the court below, has no bearing on the issues here involved. It merely sustains the proposition which has long been the law: that seamen may not be imprisoned for refusing to

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[14] In its decision the court said:

> "I do not mean, by any of the observations I have made, to extenuate or excuse the misconduct of which the mariner has been guilty. His conduct has been most culpable, and I should rejoice much if the English law gave me the power of muleting him of a part of his wages as a punishment for his misbehaviour; * * * that great insubordination prevailed on board the vessel, is clearly proved. At the same time, it is to be observed, that it was only upon one occasion; when the crew were in a state of inebriety, and when the inebriety had been altogether unchecked by the master and officers on board" (p. 88).

sail with the vessel. Such would constitute involuntary servitude.

In support of its conclusion the court noted "that students of the subject had reached the same conclusion." The "students of the subject" cited were Messrs. Rothschild (*The Legal Implications of a Strike by Seamen*, 45 YALE L. J. 1181 (1936); Sapiro and Frank (*Mutiny at the Dock*, 25 CAL. L. REV. 41 (1936)). These law review articles are scarcely the result of unbiased study[15] but were obviously written on behalf of persons interested in this and other litigation or in legislation.

Since the authorities upon which the court below relied are inapplicable or unworthy of confidence, since a modern vessel is never safe, and since it cannot be expected that a crew undisciplined in port will be disciplined at sea, the Court should hold that reason, if it may be considered, requires the application of the statute in the circumstances of this case.

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[15] Mr. Rothschild's article in the Yale Law Journal states that it was prepared at the instance of the International Juridical Association and with the assistance of the editor of its Monthly Bulletin, in which it concurrently appeared, Vol. 4, No. 11A, p. 1 and No. 12, p. 4, in May and June, 1936. The International Juridical Association is affiliated with the International Labor Defense and other organizations which, according to the "Dies Committee", are directed by the Communist Party. H. Rep. No. 1476, 76th Cong., 3d Sess. (1940) p. 9; see Hearings of Special Committee of the House of Representatives on Un-American Activities V. 1, pp. 503, 531, 574.

Mr. Sapiro, co-author of "Mutiny at the Dock", during the year of publication of his article was counsel for the Sailors Union of the Pacific, an organization obviously interested in extending the right to strike. Mr. Sapiro has been disbarred in the federal and state courts of New York on charges of obstructing justice by jury tampering. In the Matter of Sapiro, 101 F. (2d) 1018 (1939); In re Sapiro, 29 N. Y. Supp. 518 (1941).

III.

Irrespective of the existence of such statutory prohibition the conduct of the crew in this case was such as to warrant their discharge.

We have shown under the last point that reasons of safety alone contravene the conclusion reached below and necessitate the application of the revolt statute throughout the admiralty and maritime jurisdiction of the United States. The showing made there that a steamship is never safe, in port or out of port, unless the crew is alert and obediently efficient in the carrying out of necessary commands, is equally controlling, even if there were no statute prohibiting concerted refusal to obey the lawful orders of the master. Reasons of safety in port and at sea still require that the crew be well disciplined and faithful to their Shipping Articles while in port. Discharge of the seamen here was fully justified to assure the continued discipline necessary to safe operation of American vessels and is supported by decisions in the Fifth and Ninth Circuits not relying on the revolt statute.

Thus in *Peninsular & Occidental S. S. Co.* v. *National Labor Relations Board, supra,* the Circuit Court of Appeals for the Fifth Circuit said (p. 414):

> "The owners of vessels, their masters and other officers, are required to exercise the highest degree of care and skill for the preservation of the lives of passengers and crews and to safely transport the cargo. This duty is superior to all other considerations in the operation of ships. Implicit obedience to the lawful orders of the master is required on a vessel. Without that there would be no safety. * * * A ship that is not manned by a competent crew is un-

> seaworthy. * * * It would be difficult to imagine any greater grounds of incompetency than disobedience of the lawful orders of the master and the possibility of mutiny. *It would be gross negligence for a vessel to put to sea with that kind of crew.*" (Italics supplied.)

In *Texas Company* v. *National Labor Relations Board*, *supra*, Circuit Judge Denman of the Ninth Circuit, a judge learned in admiralty questions, in upholding a discharge for habitual drunkenness of a labor leader on the tankship *Nevada*, described in detail the hazards of shipboard and navigation generally and the necessity for an obedient and competent crew. He pointed out particularly the dangers of tanker operation (p. 188):

> "It needs but an extreme illustration to make clear our views of the supremacy of the maritime safety laws to those not familiar (as the Board here appears) with the universal hazards of navigation, and particularly in this case, in the management, in port and at sea, of vessels carrying highly explosive and inflammable cargoes of gasoline and oil. Unlike general cargo vessels, the tanker is subject to the dangers of her peculiar cargo in port as well as at sea. In some respects that menace is heightened in loading and discharging."

The Record does not show the nature of the cargo of the *City of Fort Worth* or the dangers inherent therein, but it would be preposterous to vary the standard of duty of a seaman according to the type of vessel involved.

Vessel operators must be able to protect themselves by discharge of incompetent or disobedient seamen, or they may be subjected to actions for damages to passengers or cargo, and their insurance may be vitiated. See *New York*

& Cuba Mail S. S. Co. v. *Continental Insurance Co.*, *supra*, and the quotation from the *Peninsular & Occidental* case, *supra*.

The analogy apparently made by the court below between employment on shore and employment on shipboard (p. 510) is wholly inadequate.[16] Thus the *Texas Company* case, *supra*, points out (p. 187):

> "The duties and obligations of the master of the ship in making up and controlling his crew cannot be determined by the study of the management of, say, a great automobile factory. An automobile factory is not a moving mass of steel floating in the ocean, whose propulsion must be controlled by instant intelligent co-operation of commander and his seamen and engineers while driven through a storm or the obscuration of rain, fog or smoke in heavily traveled shipping lanes or in approaching and passing through narrow channels with cross tidal and river currents, or, as for four years from 1914 to 1918 in the Great War, in the zigzag maneuvers of a convoy, or, steaming alone, in avoiding a submarine or dodging a torpedo,—the latter situations not beyond the reasonable contemplation of the Board at the time of the writing of its briefs and of its argument.
>
> "Nor is the psychology of the workers in a mill, living in their comfortable homes with their families and with diversions of modern town life, the gauge for the seaman's mind, living in necessarily cramped quarters, though vastly improved now through the pressure of their labor organizations, having 16 hours unoccupied time between watches, without the recreations and diversions which come to men living ashore."

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[16] "There is nothing in the [National Labor Relations] Act to indicate that Congress intended to disregard the fact that working conditions of seamen differ from those affecting workers ashore * * *." Rees v. United States, *supra* (p. 792).

Even if the Court ignores the distinction between maritime employment and that ashore, the doctrine of *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240 (1939), would clearly seem to justify the discharge of these seamen. It definitely condemns sit-down strikes; the fact that the crew of the *City of Fort Worth* engaged in no disorderly or violent conduct should not detract from the principle. Their action was in violation of the specific terms of their Shipping Articles and their oath of obedience as seamen (46 U. S. C., Sec. 672(g)); it effectively deprived the master of his control over the vessel and so constituted a constructive seizure of the vessel. See *The Oakmar*, 20 F. Supp. 650 (D. Md., 1937) and *The Losmar*, 20 F. Supp. 887 (D. Md., 1937).

There is even more reason for holding sit-down strikes on board ship illegal in view of the policy of the United States with respect to the merchant marine as stated in the Merchant Marine Act, 1936 (46 U. S. C., Sec. 1101):

> "It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine * * * capable of serving as a naval and military auxiliary in time of war or national emergency * * * and manned with a trained and efficient citizen personnel. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine."

The United States Maritime Commission in its Economic Survey of the Merchant Marine, *supra*, at page 46, deplored the then existing labor conditions and their aggravation by sit-down strikes, and in its report on H. R. 3427 and H. R. 3428 (see Appendix) stated its conviction

that condonation of such strikes was contrary to this public policy.

Assuming the absence or non-applicability of criminal sanctions upon the concerted disobedience of a crew, the sit-down strike here involved should be condemned and held proper justification for the seamen's discharge since such sit-down strikes *per se* are unlawful and since the immediate and future safety of the vessel, her crew and her cargo were imperiled.

Conclusion.

The Court should condemn as contrary to existing law the conduct of members of the crew of a vessel of the United States who engage in a sit-down strike thereon in a port of the United States or elsewhere in defiance of the lawful orders of the master, and should hold that Petitioner's discharge of the participating crew members was justified and not properly subject to an order of reinstatement by the Board.

Respectfully submitted,

JOHN J. BURNS,
Attorney for American Merchant Marine Institute, Inc., Amicus Curiae.

FRANCIS S. WALKER,
WILLIAM G. SYMMERS,
Of Counsel.

February, 1942.

APPENDIX.

UNITED STATES MARITIME COMMISSION
WASHINGTON

Office of the Chairman

March 27, 1939

Honorable S. O. Bland
Chairman, Committee on Merchant Marine
and Fisheries
House of Representatives

My dear Mr. Chairman:

Under date of February 1, 1939, you requested the views and recommendations of the Commission with respect to H. R. 3427 and H. R. 3428.

H. R. 3427 is a bill "to amend title 18, section 484, United States Code (Criminal Code, sec. 293), an Act entitled 'Revolt or mutiny on shipboard'".

H. R. 3428 is a bill "to amend title 18, section 483, United States Code (Criminal Code, sec. 292), an Act entitled 'Inciting revolt or mutiny on shipboard'".

The following comparative texts will illustrate the changes which the proposed bills would make in the existing law. Underscoring indicates words which would be added by the text of the proposed bill to the existing law, while the words in the existing law which would be omitted from the proposed legislation have been lined out.

The combined comparative text of H. R. 3428 and U. S. C., title 18, section 483, is as follows:

> "Whoever, being of the crew of a vessel of the United States, under way on the high seas, ~~or on any other waters within the admiralty and maritime jurisdiction of the United States,~~ endeavors to make a revolt, or mutiny, or riot on board (thereof) ~~such vessel, or combines, conspires, or confederates with any other person on board to make such revolt or mutiny,~~

~~or solicits, incites, or stirs up any others of the crew to disobey or resist the lawful orders of the master or other officers on such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof,~~ or unlawfully confines the master or other commanding officers thereof, shall be fined not more than ~~$1,000~~ ($250) or imprisoned not more than ~~five years~~ (12 months), or both."

The combined, comparative text of H. R. 3427 and U. S. C., title 18, section 484, is as follows:

"Whoever, being of the crew of a vessel of the United States, under way on the high seas, ~~or on any other waters within the admiralty and maritime jurisdiction of the United States~~ unlawfully and with force, ~~or by fraud, or intimidation,~~ usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, ~~or resists or~~ (and) prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than ~~$2,000~~ ($500) and imprisoned not more than ~~ten years~~ (two and one-half) years."

The proposed bills would emasculate the present laws in respect of revolt or mutiny on shipboard. No conduct by members of the crew of a vessel of the United States would constitute a violation of the statutes unless the vessel were under way on the high seas and then only if actual force as distinguished from the lesser degrees of revolt or mutiny involving use of fraud or intimidation were used against the commanding officer. Moreover, the proposed amendments would reduce the maximum penalties by seventy-five per cent.

It is the Commission's considered opinion that there is no reason which would justify the Congress in lessening the authority of the masters on board vessels of the American merchant marine.

Because of these radical changes which would be made in the law relating to discipline on board ship by the proposed measures, a brief discussion of the laws now obtaining is thought pertinent.

Subdivisions 4 and 5 of section 4596 of the Revised Statutes (46 U. S. Code, Sec. 701) provide for the punishment of seamen for the misdemeanor of willful disobedience *at sea*, by imprisonment for not more than one month; and for "continued willful disobedience to lawful command or continued neglect of duty at sea" by imprisonment not more than three months. This statute has been held to relate "to mere ordinary disobedience or neglect of duty by one or several seamen", while Sections 292 and 293 of the Criminal Code (U. S. Code, Title 18, Sections 483, 484), now sought to be amended, cover the more serious offenses of concerted action by the crew amounting to resistance to, or deprivation of, the master's lawful command. (*Hamilton* v. *United States* (C. C. A. 4th 1920) 268 Fed. 15, 20).

The distinction between "mutiny or revolt", a felony, and "willful disobedience at sea", a misdemeanor, is thus clear. Revolt or mutiny implies concerted action by a combination of the crew whereas the lesser offense of "willful disobedience" relates to the isolated wrong of one or at most several members of the crew.

The crimes of endeavoring to incite to revolt or mutiny, or actually accomplishing revolt or mutiny, may be committed "on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States". It is well settled that this includes all such offenses committed on the vessels of the United States on navigable waters, including the ports, rivers and harbors of foreign countries. (*United States* v. *Flores*, 289 U. S. 137).

The lesser offenses of willful disobedience must occur "at sea". In the event of individual acts of disobedience occurring elsewhere than at sea, the master's clear remedy is to discharge the offender, when such action is necessary, in the presence of a shipping commissioner or other duly constituted official. This the master may do without disorder because his lawful command has not been usurped or thwarted by the crew as a whole. Moreover, in port one or several recalcitrant seamen may be replaced without serious danger to the ship or interruption in its service.

The necessity for discipline aboard ship and the need for a central authority to be lodged in one individual, the master, is so fundamental and indisputable that it should require no elaboration here. Doubts in this respect, which had been raised in certain quarters, were dispelled following the unfortunate occurrences on board the SS. "Algic" which culminated in the prosecution, under Section 292, Criminal Code, of certain members of the crew who refused to obey the lawful orders of the master and participated in a "sit-down strike" on board that vessel while she was lying in the harbor of Montevideo, Uruguay, September 10, 1937. As was said in that case by Judge Chesnut in his charge to the jury:

> "The right of laborers, whether under contract or not, to strike on land is not questioned. It is freely exercised, and it is not involved in any way in this case. In that respect there is a very grave difference, between the law of the land and the law of the sea, and a moment's reflection will show you how and why that is, and must be, so.
>
> "From time immemorial the perils of the sea have made it absolutely essential that there be some one person in command of a ship, because the lives and the safety of everyone on board, including the value of the cargo of the ship which, in these days, sometimes runs into the value of millions of dollars, is

dependent upon the wise exercise of judgment and discretion. * * *

"If the law gave sanction to the right of the crew to determine questions of policy and management of the ship, you would find very few underwriters, I expect, who would be willing to insure a ship, or a shipping line where it was known that that discipline, or lack of discipline, prevailed. You would find few passengers of discrimination and care who would be willing to sail on the lines where that kind of discipline prevailed. And the age long immemorial customs of the sea have been to the contrary, and the laws of the United States in giving them express written form do nothing more than has been proved by the experience of men for at least a thousand years". (*United States* v. *Rees, et al* (D. Md.) 1937 A. M. C. 1611, Aff'd. 95 Fed. (2d) 784).

In *Peninsular and Occidental Steamship Co.* v. *National Labor Relations Board* (C. C. A. 5th, 1938) 98 Fed. (2nd) 411, (Certiorari denied) Foster, C. J., speaking for the Court said:

"The owners of vessels, their masters and other officers, are required to exercise the highest degree of care and skill for the preservation of the lives of passengers and crews and to safely transport the cargo. This duty is superior to all other considerations in the operation of ships. Implicit obedience to the lawful orders of the master is required on a vessel. Without that there would be no safety. Engaging in sit-down strikes and taking possession of the ships, in defiance of their officers, was at least prima facie evidence that the crews were guilty of mutiny. 18 USCA Sec. 483. *Hamilton* v. *United States*, 268 Fed. 15; Cert. den. 254 U. S. 645."

Seamen who sign articles to become members of the crew of a vessel of the United States enter into a rela-

tionship which, in the nature of things, is different from that assumed by persons employed on land. Both as "wards of the admiralty" under the general maritime law and by special acts of Congress applying only to them, seamen enjoy many benefits not accorded to land workers. At the same time they must assume certain correlative duties not necessary to land occupations.

In the Economic Survey of the American Merchant Marine, the Commission said (p. 46):

> "The sea is no place for divided authority. When a man puts foot on the deck of a ship, he becomes part of a disciplined organism subject to the navigation laws of the United States."

It has been contended that the mutiny statutes do not apply unless the vessel is in actual danger and *a fortiori* there can be no mutiny in a safe harbor. This contention, not having met with success in the courts (*Rees v. United States; Hamilton v. United States*) is brought before the legislative branch of the Government in the form of the proposed amendments. The fact that a vessel may be in a safe harbor does not, under existing law, and it is submitted, should not, give sanction to the offenses covered by the mutiny statutes. It is apparent to all those familiar with the sea that no vessel is safe unless she is, among other things, manned by a competent crew which means, in short, a crew alert to its duties and responsive at all times to the lawful commands of the master. A crew which does not meet this test is not competent and must, moreover, be lacking in that morale which is necessary to the safe preservation of the ship, her passengers and cargo. Because of the human factor involved, it is difficult to see how the morale of a crew which feels that it should be free to disobey the lawful commands of the master when the vessel is not "under way on the high seas", can be revived with automatic regularity when the ship weighs anchor or crosses an imaginary line to the high seas.

What was said many years ago by Mr. Justice Woodbury in *United States* v. *Staly* is none the less true today——

> "If obedience can be required on a vessel on the high seas, at a distance from the river, it should be in the river, or at anchor and before the clearance is obtained as well as after, or all orders will be frustrated, and the due navigation and safety of the vessel rendered impossible. *U. S.* v. *Hamilton* (Case No. 15291); *U. S.* v. *Stevens* (Id. 16,394). If there be anything in the objection, it applies to the jurisdiction of this court to try the offense, when committed within the stream and port, and not on the high seas, rather than to the offense itself not having been committed at all". (Fed. Cas. No. 16,374, p. 1290).

Certainly there need be no fear, on the part of members of an orderly and competent crew, that they will run afoul of existing statutes governing discipline on board vessels of the United States. As there can be no escape from the necessities of such discipline, there should be no diminution of the authority required to meet those necessities.

The Commission is of the opinion that the proposed amendments, if enacted, would be harmful to the development of the American merchant marine and it is, accordingly, opposed to the measures.

The Commission is advised by the Acting Director of the Bureau of the Budget that there would be no objection to the submission of this report to your Committee.

Very sincerely yours,

(sgd) E. S. Land
E. S. LAND
Chairman

P. 11, 5

SUPREME COURT OF THE UNITED STATES.

No. 320.—October Term, 1941.

Southern Steamship Company, Petitioner, *vs.* National Labor Relations Board and National Maritime Union of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 6, 1942.]

Mr. Justice Byrnes delivered the opinion of the Court.

Upon the petition of a union not a party to the present suit, the National Labor Relations Board ordered an election among petitioner's unlicensed employees to determine their collective bargaining representative. The elections were held on board seven of petitioner's vessels during October, 1937. In the case of the election on board the S.S. *City of Houston*, the labor organizations involved objected to the presence of any representative of the petitioner during the voting, and consequently none was admitted by the Board. No such objection was raised with respect to the subsequent balloting, and petitioner's representatives were present while the vote was taken on board the remaining six vessels. The National Maritime Union obtained a clear majority of all the votes cast. Because of the exclusion of its representative from the voting on the S.S. *City of Houston*, petitioner objected to the certification of the N. M. U. as the exclusive bargaining representative of the employees in the unit. On January 26, 1938, the Board rejected petitioner's contention, and issued a certification order. 4 N. L. R. B. 1140.

Six months later, on July 26, the N. M. U. filed charges against petitioner, which it amended on November 22. On November 23, the Board issued a complaint in which it accused petitioner of violations of Sections 8(1), (3) and (5) of the National Labor Relations Act. U. S. C., Title 29, Section 158(1), (3), (5). The allegations of the complaint were that the N. M. U. had been certified in January as exclusive bargaining representative, that

petitioner had consistently refused since that time to bargain with the Union, that as a result of this refusal to bargain a strike had occurred on July 18 aboard petitioner's S.S. *City of Fort Worth* while docked at Houston, Texas, that upon the *City of Fort Worth's* return to Philadelphia on July 25 five members of the crew[1] were discharged because of their membership and activity in the Union and particularly because of their participation in the strike, and that as a result of these discharges other members[2] of the crew of the *Fort Worth* had gone on strike while the vessel was at home dock in Philadelphia. In its answer to this complaint, petitioner generally denied these allegations and chiefly contended: first, that it had been under no obligation to bargain with the N. M. U. because the Board's refusal to permit petitioner to be represented at the election aboard the S.S. *City of Houston* rendered the entire certification proceedings void; and second, that the discharge of the five members of the *City of Fort Worth* was not an unfair labor practice because it was based upon their misconduct in striking on July 18 while under Shipping Articles, away from home port, and on board ship.

After the usual proceedings, on April 22, 1940, the Board issued its findings of fact, conclusions of law, and order. 23 N. L. R. B. 26. Its findings, which must be set out in some detail, follow:

After the election and the certification of the N. M. U. in January, 1938, the Union made persistent efforts through its representatives to arrange a bargaining conference with officials of the petitioner. Every such attempt was frustrated by the latter, who refused even to answer the requests until August. In that month the Union was notified that petitioner would not undertake to bargain with it "until the validity of the Board's certification was settled by the Board and the courts."

On July 17, while the *City of Fort Worth* was docked at Houston, thirteen unlicensed members of the crew met in a union hall. They decided to strike the next day to compel petitioner to recognize the Union and to issue to the Union's shore delegates the passes without which they could not board petitioner's vessels. At 8 o'clock the following morning the strike began. One of the men, Tracey, failed to turn the steam "on deck" for use in loading the cargo. He was then asked by the first assistant engineer why he

[1] Warren, Tracey, Pfuhl, Smith and Ferguson.

[2] Crassavaz, Reeves, Lathan, Burns, Hughes, Neeley and Holt.

had failed to do so, and answered that a strike was on, explaining the strikers' demands. When the first assistant engineer turned on the steam himself, Tracey persuaded Braun, the fireman, to leave his post. And Ferguson, who came on duty just at that moment to replace Braun as fireman, also refused to tend the fires. The second assistant engineer then undertook to tend the fires himself, and Tracey, Ferguson and Braun went to the poop deck where the rest of the strikers were sitting. The poop deck is the usual meeting place of the crew when not on duty.

From that time until evening the strikers sat quietly by, engaging in no violence and not interfering with the officers of the ship or the non-striking members of the crew who proceeded with the loading of the cargo. The strikers did not "claim to hold the ship in defiance of the right of possession of the owner".[3] But when the captain ordered them to return to work, they refused. They continued to refuse after a deputy United States Shipping Commissioner came aboard and read to them that provision of their shipping articles in which they had promised "to be obedient to the lawful commands" of the master. Late in the afternoon, although he had not been authorized to do so, petitioner's attorney in Houston promised the Union's attorney in that city that he would meet with the latter during the following week to negotiate an agreement and that he would recommend to petitioner that passes be granted to shore delegates. As a result of this promise, the strike was ended at about 7 p. m. and the ship sailed on schedule at about 9 p. m.

The return voyage to Philadelphia was marked by no further difficulty. However, during the course of it the captain decided not to reship five of the strikers.[4] When the ship reached port on July 25 and the men signed off the shipping articles, these five were informed that they would not be reshipped. Most of them had been members of the *City of Fort Worth's* crew continuously

[3] The Board found that the strikers were at no time ordered to leave the ship. It is true that three of the officers testified that they had neither given nor heard any of the officers give such an order. But despite a great reluctance to overturn a finding on such a pure matter of fact, we cannot square it with the affirmative and uncontradicted testimony of Tracey, one of the strikers, that petitioner's agent in Houston boarded the ship at least four times during the day, at least once in the company of the Captain, ordered the strikers to leave the ship within the next half hour, and announced that he was going to bring on a new crew (R. 140-141, 161-162).

[4] See note 1, *supra*.

for a considerable length of time.[5] It was the custom of petitioner to have the seamen sign new articles for the next voyage when signing off the old, but even when this was not done the men considered themselves employed for the next voyage unless notified to the contrary. Under these circumstances the Board found that the five men in question had actually been discharged and that their employment had not simply ended as of course when the shipping articles expired. Seven[6] of the other men who had engaged in the Houston strike immediately struck again in protest against the discharge of their fellows. On the basis of this evidence the Board found that both the strike at Houston on July 18 and the strike at Philadelphia on July 25 were caused by petitioner's unfair labor practices. And it made a specific finding with respect to each of the five men that the discharge was based upon participation in the Houston strike. It concluded that petitioner had interfered with its employees' right to organize and bargain collectively, in violation of § 8(1); that it had discriminated with regard to tenure of employment, in violation of § 8(3); and that it had refused to bargain with the authorized representative of its employees, in violation of § 8(5).

Consequently, it ordered petitioner to cease and desist: (a) from discouraging membership in the N. M. U. or any other labor organization by discriminating in regard to employment; (b) from refusing to bargain collectively with the N. M. U.; and (c) from interfering with, restraining, or coercing its employees in any way in the exercise of their right to organize and bargain collectively. In addition, and "in order to effectuate the policies of the Act," the order included the following affirmative requirements: (a) that petitioner bargain with the N. M. U.; (b) that it reinstate with back pay the five men discharged; (c) that, upon application, it offer immediate reinstatement to the July 25th strikers; and (d) that it post notices of its intention to conform to this order.

Petitioner sought to have this order set aside by the Circuit Court of Appeals. The Circuit Court, however, sitting *en banc*, and with one judge dissenting, entered a decree enforcing the

[5] The Board's finding on this matter was that "Tracey had been employed continuously over a period of 16 months, Ferguson for a period of 1 year, Pfuhl over a period of 8 months, Warren over a period of 6 weeks, and Smith over a period of 18 months. Each round-trip voyage of the *City of Fort Worth* is scheduled to take about 25 days." (R. 27.)

[6] See note 2, *supra*.

order with a single minor modification.[7] 120 F. 2d 505. We granted certiorari because of the importance of the matters involved, and because of an asserted conflict with decisions of this Court and of other Circuit Courts of Appeal.

Petitioner's contentions in this Court are: (1) that the refusal by the Board to permit a company representative aboard the S.S. *City of Houston* during the voting vitiated the entire election and certification proceeding and absolved petitioner of any duty under the Act to bargain with the N. M. U.; (2) that the employment of the seamen involved automatically terminated when they signed off the shipping articles in Philadelphia, so that they cannot be said to have been "discharged"; and (3) that participation in the Houston strike by the discharged seamen was misconduct of such a character that the Board cannot order their reinstatement.

The first two of these arguments are without substance. The Board enjoys a wide descretion in determining the procedure necessary to insure the fair and free choice of bargaining representatives by employees. *N. L. R. B.* v. *Waterman Steamship Corporation*, 309 U. S. 206, 226; *N. L. R. B.* v. *Falk Corporation*, 308 U. S. 453, 460. It is wholly reasonable to remove any possibility of intimidation by conducting the election in the absence of the employer's representatives. With respect to whether the five men in question were actually discharged upon the ship's return to Philadelphia, petitioner concedes that the formal signing off of the shipping articles was not conclusive. The tenure of their employment must be determined in the light of all the evidence concerning petitioner's employment customs and practices. *N. L. R. B.* v. *Waterman Steamship Corp.*, 309 U. S. 206, 218. The argument here therefore comes to this, that this record does not warrant a finding that the tenure of employment survived the termination of the shipping articles. An examination of the record convinces us that the concurrent finding of the Board and the Circuit Court on this question should not be disturbed.

The situation, then, is one in which an employer indulges in an unfair labor practice, a strike results, and several men are dis-

[7] The Board's order permitted petitioner to deduct from the back pay due any amounts that the discharged men might have earned during the period in question, but required it to reimburse any public work relief agency for sums paid to any of the men during that time. The latter phase of the order was eliminated by the Circuit Court of Appeals on the authority of Republic Steel Corp. v. National Labor Relations Board, 311 U. S. 7. The Board raises no objection to this modification of its order.

charged for participating in the strike. If there were no more to the case, and the Board found that it would serve to effectuate the policies of the Act to reinstate the strikers, an order requiring reinstatement would undoubtedly be enforceable. *National Labor Relations Board* v. *Stackpole Carbon Co.*, 105 F. 2d 167. But there is more to this case. The strike was conducted by seamen on board a vessel and away from home port. The question is whether this circumstance renders it an abuse of discretion for the Board to order the reinstatement of the strikers. We think that it does.

Ever since men have gone to sea, the relationship of master to seaman has been entirely different from that of employer to employee on land. The lives of passengers and crew as well as the safety of ship and cargo are entrusted to the master's care. Every one and every thing depend on him. He must command and the crew must obey. Authority cannot be divided. These are actualities which the law has always recognized. On the one hand, it has imposed numerous prohibitions against conduct by seamen which destroys or impairs this authority. We shall consider in a moment the nature and scope of the criminal sanctions imposed in case of revolt and mutiny. But it is worth noting here that the form of the "shipping articles" which the master and every member of the crew must sign prior to the voyage has been carefully prescribed by Congress, and that these articles contain this promise: "And the said crew agree . . . to be obedient to the lawful commands of the said master . . . and their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore . . ." U. S. C., Title 46, §§ 564, 713. On the other hand, workers at sea have been the beneficiaries of extraordinary legislative solicitude, undoubtedly prompted by the limits upon their ability to help themselves. The statutes of the United States contain elaborate requirements with respect to such matters as their medicines, clothing, heat, hours and watches, wages, and return transportation to this country if destitute abroad. U. S. C., Title 46, §§ 651-692, 1131. It is in this setting of fact and law that we must test the validity of the Board's order of reinstatement.

Petitioner contends that the strike aboard the *City of Fort Worth* at the dock in Houston was mutiny and violated Sections 292 and 293 of the Criminal Code. Those sections provide:

§ 292. Inciting revolt or mutiny on shipboard. Whoever, being of the crew of a vessel of the United States, on the high seas, or

any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires, or confederates with any other person on board to make such a revolt or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect their proper duty on board thereof, or to betray their proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof, or unlawfully confines the master or other commanding officer thereof, shall be fined not more than $1000 or imprisoned not more than five years or both. (U. S. C., Title 18, § 483).

§ 293. Revolt or mutiny on shipboard. Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives him of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than $2000 and imprisoned not more than ten years. (U. S. C., Title 18, § 484).

The Board's defense to this contention is two-fold. It argues, first, that the conduct of the strikers did not violate either of these sections, and, second, that even if it did the violation does not bar their reinstatement.

First. We think that the strike aboard the *City of Fort Worth* on July 18 was in violation of §§ 292 and 293. It may hardly be disputed that each of the strikers resisted the captain and other officers in the free and lawful exercise of their authority and command, within the meaning of § 293, or that they combined and conspired to that end, within the meaning of § 292. Deliberately and persistently they defied direct commands to perform their duties in making ready for the departure from port. It is true that they did not engage in violence or prevent the other men and officers from proceeding with preparations for the voyage.[8] But short of that, they did what they could to prevent the ship from sailing. In the words of the striker Tracey, had they not believed that their demands had been satisfied, "we would still be sitting

[8] It should be noted, however, that according to the second assistant engineer's testimony, when he told Tracey that he intended to put the steam on deck himself, Tracey replied, "You had better not. You will be sorry." No effort was made to carry out this threat.

there". There is no doubt that they undertook to impose their will upon the captain and officers.

None of these facts is denied by the respondents or by the Circuit Court.[9] Indeed it is admitted that had the strike occurred on the high seas, the participants would have been guilty of mutiny. But a distinction is said to lie between strikes at sea and at dock. To determine the validity of this distinction we turn first to the words of the statute. They are plain enough: "Whoever, being of the crew of a vessel of the United States, on the high seas, *or on any other waters within the admiralty and maritime jurisdiction of the United States*", etc. It has long been settled that the admiralty and maritime jurisdiction of the United States includes all navigable waters within the country. *The Genesee Chief*, 12 How. 443.[10] The water in the harbor of Houston is certainly navigable, and a boat at dock there is obviously within the territorial limits of the United States. The words of the statute alone, therefore, do not warrant an exception in the case of a vessel situated as the *City of Fort Worth* was when the strike occurred.

Nor are we referred to the decision of any court in which such an exception has been implied. Under the original Mutiny Act of 1790,[11] Justice Story held without hesitation that a refusal to work while a vessel was in an American harbor was a violation of the statute.[12] The act of 1790 was supplanted in 1835 by a statute which, with only minor changes, now appears as Sections 292 and 293 of the Criminal Code, set out above.[13] Since 1835, whenever the question has arisen, the courts have held that a mutiny may occur in a harbor, either foreign or domestic, as well

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[9] The Board did not consider the question of whether the strike amounted to mutiny.

[10] On the jurisdiction of the United States over men and vessels in foreign waters, see United States v. Flores, 289 U. S. 137; United States v. Roberts, 27 Fed. Cas. No. 16,173 (C. C. S. D. N. Y. 1843).

[11] 1 Stat. 112, §§ 8 and 12.

[12] United States v. Hamilton, 26 Fed. Cas. No. 15,291 (C. C. D. Mass. 1818) (the report of this case is not altogether clear on whether the ship was at anchor in Salem Bay or tied to a dock there, but the former seems to have been the case); United States v. Gardner, 25 Fed. Cas. No. 15,188 (C. C. D. Mass. 1829) (this report also fails to reveal the exact situation of the vessel in Boston harbor at the time of the strike, but it is possible that it was moored to the dock since Boston was its home port and it was "all ready for sea", and presumably the loading had just been completed).

[13] 4 Stat. 775, 776.

as at sea.[14] It is true, however, that in none of these cases does it expressly appear that the vessel was tied to a dock as was the *City of Fort Worth* in this case. And in the *Rees* case, the court specifically reserved the question of whether the Mutiny Act bars a strike on board a vessel so situated. 95 F. 2d 784, at 792.

It was therefore strictly accurate for the Circuit Court of Appeals to observe that "the question of the right of seamen to strike under the circumstances of the case before us is still an open one." On this assumption, however, it proceeded to conclude that the necessity for absolute authority in the master is so considerably diminished when the ship is moored in a "safe" port that a strike in such circumstances should not be held to violate the Act. This theory has been regarded with favor by a number of courts and commentators[15] and is said to conform more closely to changed conceptions with respect to the freedom of workers on land or sea to organize, to bargain, and to use economic weapons to enforce their demands.

The difficulty with the contention is that it ignores the plain Congressional mandate that a rebellion by seamen against their officers on board a vessel anywhere within the admiralty and maritime jurisdiction of the United States is to be punished as mutiny. If this mandate is to be changed, it must be changed by Congress and not by the Courts. If further proof be needed of a Congressional belief that the requirements of discipline during a voyage do not vary with each change in circumstance, it may be found in the shipping articles to which we have already referred. For in those articles the members of the crew are obliged to promise to obey lawful commands "whether on board, in boats, or on shore". And before a seaman's certificate is issued by the Bureau of Marine Inspection and Navigation the applicant must take an oath to " . . . carry out the lawful orders of my

[14] United States v. Cassedy, 25 Fed. Cas. No. 14,745 (C. C. D. Mass. 1837); United States v. Lynch, 26 Fed. Cas. No. 15,648 (C. C. S. D. N. Y. 1843); United States v. Roberts, 27 Fed. Cas. No. 16,173 (C. C. S. D. N. Y.) 1843); United States v. Staley, 27 Fed. Cas. No. 16,374 (C. C. D. R. I. 1846) (at anchor in the Providence River); United States v. Nye, 27 Fed. Cas. No. 15,906 (C. C. D. Mass. 1855); Hamilton v. United States, 268 F. 15; Rees v. United States, 95 F. 2d 784; United States v. Albers, 115 F. 2d 833.

[15] See *The Blake*, 1 W. Rob 73, 166 Eng. Rep. 500; Buddington v. Smith, 13 Conn. 334; Sapiro and Frank, *Mutiny at the Dock*, 25 Cal. L. Rev. 41; Rothschild, *The Legal Implications of a Strike by Seamen*, 45 Yale L. J. 1181; Decision, 38 Col. L. Rev. 1294. But see McLaughlin, Note, 18 Ore. L. Rev. 128; Note, *Labor Disputes in the Merchant Marine*, 28 Va. L. Rev. 79.

superior officers on shipboard."[16] The lower court expressed the opinion, "Upon reason, however, there is no sound basis for depriving seamen of this right [to strike] when as here their vessel is moored to the dock in a safe domestic port." But the soundness or unsoundness of the reasoning is for the determination of Congress. As recently as 1939 two bills were introduced in the House of Representatives for the purpose of limiting the scope of Sections 292 and 293 to vessels "under way on the high seas". H. R. 3427, 3428, 76th Congress, 1st Session. The United States Maritime Commission communicated to the House Committee on Merchant Marine and Fisheries its firm objection to the measures,[17] and they were never enacted. When the legislative purpose is so plain, we cannot assume to do that which Congress has refused to do.

In any event, a sweeping requirement of obedience throughout the course of a voyage is certainly not without basis in reason. The strategy of discipline is not simple. The maintenance of authority hinges upon a delicate complex of human factors, and Congress may very sensibly have concluded that a master whose orders are subject to the crew's veto in port cannot enforce them at sea. Moreover, it is by no means clear that a ship moored to a dock is "safe" if the crew refuses to tend it, as the strikers did at Houston. At the very least, steam must be maintained to provide

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[16] See current "Application for Seaman's Certificate", issued by Shipping Section, Bureau of Marine Inspection and Navigation, Department of Commerce. And see also U. S. C., Title 46, § 672(g).

[17] Letter to the Committee dated March 27, 1939 and signed by the Chairman of the Commission, Emory S. Land:

"Under date of February 1, 1939, you requested the views and recommendations of the Commission with respect to H. R. 3427 and H. R. 3428.

. . . . . .

"The proposed bills would emasculate the present laws in respect of revolt or mutiny on shipboard. No conduct by members of the crew of a vessel of the United States would constitute a violation of the statutes unless the vessel were under way on the high seas and then only if actual force as distinguished from the lesser degrees of revolt or mutiny involving use of fraud or intimidation were used against the commanding officer. Moreover, the proposed amendments would reduce the maximum penalties by seventy-five per cent.

"It is the Commission's considered opinion that there is no reason which would justify the Congress in lessening the authority of the masters on board vessels of the American merchant marine.

. . . . . .

"The crimes of endeavoring to incite to revolt or mutiny, or actually accomplishing revolt or mutiny, may be committed 'on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United

light and fire protection.[18] The damage to the *Normandie* is grim enough proof that the hazard of fire is ever present.[19] It is not enough to say that in the case before us the strikers did not prevent these precautions from being taken; only the efforts of others averted the dangers to which they opened the door.

States'. It is well settled that this includes all such offenses committed on the vessels of the United States on navigable waters, including the ports, rivers and harbors of foreign countries. (United States *v.* Flores, 289 U. S. 137.)

. . . . . .

'Seamen who sign articles to become members of the crew of a vessel of the United States enter into a relationship which, in the nature of things, is different from that assumed by persons employed on land. Both as 'wards of the admiralty' under the general maritime law and by special acts of Congress applying only to them, seamen enjoy many benefits not accorded to land workers. At the same time they must assume certain correlative duties not necessary to land occupations.

"In the Economic Survey of the American Merchant Marine, the Commission said (p. 46):

'The sea is no place for divided authority. When a man puts foot on the deck of a ship, he becomes part of a disciplined organism subject to the navigation laws of the United States.'

"It has been contended that the mutiny statutes do not apply unless the vessel is in actual danger and *a fortiori* there can be no mutiny in a safe harbor. This contention, not having met with success in the courts (Rees *v.* United States; Hamilton *v.* United States) is brought before the legislative branch of the Government in the form of the proposed amendments. The fact that a vessel may be in a safe harbor does not, under existing law, and it is submitted, should not, give sanction to the offenses covered by the mutiny statutes. It is apparent to all those familiar with the sea that no vessel is safe unless she is, among other things, manned by a competent crew which means, in short, a crew alert to its duties and responsive at all times to the lawful commands of the master. A crew which does not meet this test is not competent and must, moreover, be lacking in that morale which is necessary to the safe preservation of the ship, her passengers and cargo. Because of the human factor involved, it is difficult to see how the morale of a crew which feels that it should be free to disobey the lawful commands of the master when the vessel is not 'under way on the high seas', can be revived with automatic regularity when the ship weighs anchor or crosses an imaginary line to the high seas.

. . . . . .

"Certainly there need be no fear, on the part of members of an orderly and competent crew, that they will run afoul of existing statutes governing discipline on board vessels of the United States. As there can be no escape from the necessities of such discipline, there should be no diminution of the authority required to meet those necessities.

"The Commission is of the opinion that the proposed amendments, if enacted, would be harmful to the development of the American merchant marine and it is accordingly, opposed to the measures.

"The Commission is advised by the Acting Director of the Bureau of the Budget that there would be no objection to the submission of this report to your Committee."

[18] Memorandum to Ship Operators dated December 10, 1941, Bureau of Marine Inspection, Department of Commerce.

[19] N. Y. Times, Feb. 10, 1942, p. 1, col. 8.

We conclude that the Circuit Court of Appeals erred in holding that the strike at Houston did not violate Sections 292 and 293.

Second. Assuming that the strike did violate these sections, the Board contends that the reinstatement provisions of its order were nevertheless valid. Section 10(c) of the National Labor Relations Act permits the Board to require an employer who has committed an unfair labor practice to take "such affirmative action, including reinstatement of employees . . ., as will effectuate the policies of the Act." This authorization is of considerable breadth, and the courts may not lightly disturb the Board's choice of remedies. But it is also true that this discretion has its limits, and we have already begun to define them. *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240; *Republic Steel Corp.* v. *National Labor Relations Board*, 311 U. S. 7. A complete definition of course was not and could not have been attempted in those cases. Nor will it be attempted here. It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.

This was the kind of consideration for which the present case called. To bolster its claim that it responded to this call, the Board relies upon what it asserts to have been the "technical" nature of the violation of §§ 292 and 293. Specifically, it points to the comparative safety of the ship when moored to the dock, the absence of violence, and the double character of the ship as the strikers' place of employment and their home during the course of the voyage. While we have no doubt that the danger to the vessel was considerably less than it would have been had the strike occurred at sea, we have already indicated that it was certainly present and that considerations other than immediate danger to the ship require maintenance of discipline throughout the voyage. Likewise, the absence of violence was a fortunate feature of the affair, but the flouting of the captain's authority was nevertheless deliberate and complete. Finally, for these strikers to remain aboard the ship was indeed an act of very different significance

than for strikers at an industrial plant to remain inside a factory. But in one respect at least the comparison is unfavorable to the strikers here. As a practical matter, the *City of Fort Worth* was definitely wrested from the control of its officers. In an industrial plant the employer is confronted only with the necessity of placing new men at the machines. But under the law petitioner was required to furnish living quarters to any new crew whom it might have hired for the return voyage to Philadelphia. This meant the removal of the strikers from their quarters as well as their posts of duty. It is difficult to imagine that they would have surrendered their jobs and their quarters without a struggle. They asserted their right to occupy the quarters and to eat the food which the master was required to furnish them as members of the crew and yet to refuse to work or to obey his orders. See *United States* v. *Albers*, 115 F. 2d 833, at 836. In fact, as we have noted, they intended, according to the witness Tracey, to "still be sitting there" if petitioner had not capitulated to their demands.

We cannot ignore the fact that the strike was unlawful from its very inception. It directly contravened the policy of Congress as expressed in §§ 292 and 293, and it was more than a "technical" violation of those provisions. Consequently, and despite the initial unfair labor practice which caused the strike, we hold that the reinstatement provisions of the order exceeded the Board's authority to make such requirements "as will effectuate the policies of the Act".[20]

It should be stressed that the view we have taken does not prevent the redress of grievances under the Act. At any time following the certification of the N. M. U. in January, 1938, the union and the Board could have secured the assistance of the courts in forcing petitioner to bargain. The importance of seeking such assistance promptly is strikingly illustrated in this case.[21]

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[20] Cf. Peninsular & Occidental S.S. Co. v. National Labor Relations Board, 98 F. 2d 411, 414.

[21] We do not question the Board's finding that petitioner refused to bargain with the N. M. U. after January 26, 1938. But the findings and the record indicate that the union was not markedly diligent. The Board found that one request for a conference was made by a union representative at Houston "shortly after the certification". "In late January or early February", the union's business agent in Philadelphia made a similar request. He renewed it "about the middle of February". "During the next month" he made two attempts to repeat his request by telephone. From that time until August 18, a month after the strike at Houston, he made only one other attempt, the date of which he was unable to fix.

Had the union and the Board done so, the unfortunate occurrence at Houston might have been averted. And what is more, nothing that we have said would prevent the union from striking, picketing or resorting to any other means of self-help, so long as the time and place it chooses do not come within the express prohibition of Congress.

The case is remanded to the Circuit Court of Appeals with instructions to limit its decree of enforcement to those provisions of the Board's order requiring petitioner to bargain with the N. M. U. and to post notices to that effect, but to eliminate the other provisions of the order.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 320.—October Term, 1941.

Southern Steamship Company, Petitioner, *vs.* National Labor Relations Board and National Maritime Union of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 6, 1942.]

Mr. Justice Reed, dissenting.

To support its judgment of reversal this Court relies upon the employees' violation of §§ 292 and 293 of the Criminal Code as justification for the Steamship Company's discharge of its seamen. If the seamen were discharged not for labor activity but because of the commission of serious crime, *Labor Board* v. *Fansteel Corp.*, 306 U. S. 240, would be authority for the Court's holding. It was there decided that § 2(3) of the Labor Act did not preserve a striker's eligibility for reinstatement by the Board under § 10(c), if the striker was discharged for reasons other than "union activity or agitation for collective bargaining," e. g., criminal acts. 306 U. S. at 255. The Court recognizes that where "an employer indulges in an unfair labor practice, a strike results, and several men are discharged for participating in the strike," and nothing more appears, the Labor Board may properly reinstate the strikers. It concludes, however, that where the strike provoked by the unfair practices is itself unlawful, the Board, regardless of the circumstances, loses its power to reinstate after discharge. This position, we think, unduly expands judicial review of the Board's discretionary power of reinstatement under §10(c) and is not supported by the *Fansteel* decision.

This Court recognized in the *Fansteel* case that the Board had discretion over reinstatement. 306 U. S. 258. It was thought that however wide that discretion might be, "its limits were transcended" in that case. The ninety-five men in *Fansteel* were discharged "for the seizure and retention of the buildings." 306 U. S. 252. But those men held the buildings from February 17 until February 26. They disobeyed a court injunction order to surrender the factory, and successfully resisted by force the sheriff's

efforts to enforce it. Only on his second attempt, with an increased number of deputies, did the sheriff accomplish their eviction and arrest. 306 U. S. 248-49.

Nothing approaching such disorder occurred here. The seamen's conduct did not affect the safety of the vessel. The only evidence of violation of the statutes is that the orders to load were ignored. We may assume, for this dissent, that this resulted in a violation of the criminal statutes. The Board found that the respondent refused to bargain collectively with the Union, that primarily this precipitated the strike, and that the respondent was not warranted in discharging any employee solely because of the strike. It further found that the strikers did not hold the ship in defiance of the owner nor did they trespass. The Board found in each instance that the discharges were not for disobeying orders but for striking, for peacefully, albeit unlawfully, resorting to self-help in retaliation against denial of their rights.[1] On the basis of these findings, supported by substantial evidence, the Board exercised its discretion to reinstate these men.

We think that under these circumstances, it acted within its authority. We can see no justification for an iron rule that a discharge of a striker by his employer for some particular, unlawful conduct in furtherance of a strike is sufficient to bar his reinstatement as a matter of law. *Fansteel* teaches that there are extremes of conduct which leave no discretion to the Board. We think that the acts here fall on the other side of the line and that the Circuit Court of Appeals properly so determined.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice MURPHY concur in this dissent.

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1 "The evidence is plain that both Tracey and Ferguson were discharged because of the leading parts they played in the strike. Chief Engineer Norton testified that he did not recommend Ferguson's discharge merely because he had disobeyed orders. 'I would have overlooked that had he taken the fires until we got straightened out.' Captain Rudan testified that he discharged both these men upon Norton's complaint that 'they had been on watch at the time of the commencement of this what I consider disobedience, and if they had gone on watch at the time, that the rest of the men probably would have followed. . . .'

"Captain Rudan's testimony makes it abundantly clear that the motivating factor in the respondent's decision to discharge Pfuhl was his participation in the strike. . . .

"We entertain no doubt that an employee's intoxication provides ample reason for his discharge. We believe, however, that the respondent did not discharge Warren for this reason, but rather that it seized upon his drinking proclivities to rid itself of an active union officer. . . .

"On cross-examination Sherry admitted that Smith was discharged because of his participation in the strike. . . ."